


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

**FEDERICO FLORES, JR.,
MARIA GUERRERO, and
VICENTE GUERRERO,
*Plaintiffs,***

V.

TEXAS SECRETARY OF STATE, and
ARMANDINA MARTINEZ, ALMA
GARCIA, ALICIA DOUGHERTY NO. 1,
ALICIA DOUGHERTY NO. 2,
YOLANDA MARTINEZ,
Defendants.



Case No. 7:18-cv-113

**DEFENDANT TEXAS SECRETARY OF STATE'S
FIRST AMENDED MOTION FOR SUMMARY JUDGMENT**

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§

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**DEFENDANT TEXAS SECRETARY OF STATE'S
FIRST AMENDED MOTION FOR SUMMARY JUDGMENT**

Plaintiffs Federico Flores, Jr., Maria Guerrero, and Vicente Guerrero advance broad facial and as-applied attacks on the constitutionality of Texas Election Code Section 87.041, which directs county-level Early Voting Ballot Boards (“EVBBs”) to accept mail-in ballots if they meet the State’s statutory requirements.

The claims should be dismissed. Federal courts have long recognized that the “government must play an active role in structuring elections” and thus, a “flexible standard [of review] applies” when analyzing state election laws that may burden the right to vote. *Burdick v. Takushi*, 504 U.S. 428, 433 (1992). As a result, courts have repeatedly upheld restrictions that are generally applicable and protect the integrity of the election process. For the reasons that follow, this court should follow suit.

First, despite Plaintiffs’ contentions, the Texas Secretary of State does not enforce or administer the challenged statutory provision. Rather, the responsibility for determining the legality of mail-in ballots rests uniquely and finally with the county-level

EVBBs. Because the Secretary of State does not enforce or administer Section 87.041, Plaintiffs' injuries are not fairly traceable to the Secretary of State.

Second, Plaintiffs lack standing because they have expressly disclaimed any intent to vote by mail in future elections. A favorable ruling from the Court will not redress their alleged injuries. The fact that they allege a harm arising from a prior election is insufficient; they must demonstrate that they would be harmed in a similar manner in the future, such that they would benefit from a prospective injunction issued by the Court. They have not made that showing on this record—in fact, the record *compels* a finding to the contrary.

Third, under the flexible review standard that governs these kinds of claims, a requirement that a voter properly complete and submit a mail-in ballot that meets a state's statutory requirements is not a severe restriction on an individual's due process rights. Indeed, the burden placed on voters to ensure that they properly and accurately complete the requirements set for mail-in ballots are similar to those placed on in-person voters, who must travel to a designated polling place on Election Day, often necessitating taking time off of work, arranging for childcare, and waiting in line.

The interests advanced by Texas are sufficient to defeat Plaintiffs' challenge: namely, preserving the integrity of the election process. The challenged law establishes requirements for submitting mail-in ballots in a good-faith and well-reasoned effort to ensure that the person who submitted the mail-in ballot is the person entitled to cast that ballot, as required by state election law. Texas is well within constitutional bounds in exercising that authority.

And Plaintiffs' due process claims fail for another reason, too: Texas law provides them a remedy—the potential for a civil injunctive suit brought by a county election

officer—but Plaintiffs wholly failed to explore whether that might address their concerns. They concede that they did not contact anyone in Starr County, or indeed, anyone, anywhere, after receiving notice that their ballots were rejected. Their due process claims are foreclosed because they did not take advantage of the process that Texas law affords them.

Because Plaintiffs (1) cannot demonstrate that their claims are traceable to Secretary of State; (2) cannot show how an injunction would redress their alleged injuries; and (3) cannot meet their burden of proving that the statute at issue in this case is constitutionally infirm, this Court should dismiss Plaintiffs’ claims against the Texas Secretary of State.¹

STATEMENT OF THE ISSUES

The issues as identified above include (1) whether Plaintiffs have demonstrated that the Secretary of State is a proper party; (2) whether Plaintiffs have standing to seek a prospective injunction; and (3) whether Texas Election Code § 87.041 is constitutionally sound.

STATEMENT OF THE CASE

I. Texas Law Allows Mail-in Voting in Limited Circumstances.

A. A voter must qualify to vote early by mail.

The State of Texas provides for early voting by mail, provided the person seeking to vote by mail meets the qualifications. Tex. Elec. Code ch. 82. Qualifications to vote early by mail include—

¹ Plaintiffs initially sued Rolando Pablos in his official capacity as the Texas Secretary of State. *See* Dkt. No. 1. David Whitley, his successor, was automatically substituted as the named defendant under Federal Rule of Civil Procedure 25(d). At this time, the position of Texas Secretary of State is vacant. As soon as David Whitley’s successor is appointed, the Texas Secretary of State will alert the Court so that the current Secretary of State can be substituted as a named party pursuant to Rule 25(d).

- Declaring an anticipated absence from the county of residence on election day;
- Declaring a disability “that prevents the voter from appearing at the polling place on election day without a likelihood of needing personal assistance or of injuring the voter’s health”;
- Demonstrating that the person seeking to vote by mail is over the age of 65; or,
- Showing that the person seeking to vote by mail anticipates being jailed during the voting period.

Tex. Elec. Code §§ 82.001-.004.

a.) Early voting clerks conduct early voting, not the Secretary of State.

Early voting clerks conduct early voting in Texas elections, and for purposes of general elections for state and county officers, primary elections, and special elections ordered by the governor, the county clerk for the county in which the election is held—or the county’s elections administrator if one has been appointed, as in Starr County—serves as the early voting clerk. Tex. Elec. Code §§ 31.043(2), 83.001, 83.002. Plaintiffs specifically challenge the handling of mail-in ballots cast in the March 2018 Democratic primary elections. Dkt. No. 1-5 at ¶ 2. Accordingly, the county elections administrator—not a member of the Texas Secretary of State’s Office—was required by statute to serve as early voting clerk.

Once designated, the early voting clerk is responsible for “review[ing] each application for a ballot to be voted by mail” and “provid[ing] an official ballot envelope with each ballot provided to a voter.” Tex. Elec. Code §§ 86.001(a), .002(a). After a voter marks their mail-in ballot, they must then return the mail-in vote to the early voting clerk in the official carrier envelope. Tex. Elec. Code § 86.006(a). Notably, a person who elects

to vote by mail can return their mail-in ballot on election day to the early voting clerk while polls are open. Tex. Elec. Code § 86.006(a-1). But in any case, a voter must return the ballot so that it is received no later than the time before the polls close on election day or no later than 5 p.m. on the day after election day, if returned by mail. Tex. Elec. Code § 86.007(a).

The early voting clerk also determines whether an application is defective (Tex. Elec. Code § 86.008), provides corrected ballots to voters (Tex. Elec. Code § 86.009), and determines whether ballots voted by mail are timely (Tex. Elec. Code § 86.011).

b.) County officials appoint elections judges, who in turn appoint the Early Voting Ballot Board to receive and count mail-in ballots.

County commissioners' courts appoint presiding election judges for each regular county election precinct, and state law sets out a detailed set of requirements for each appointed judge. Tex. Elec. Code §§ 32.001-.002. Under state law, County commissioners use the same process to appoint presiding election judges and EVBB presiding judges. Tex. Elec. Code § 87.002. The EVBB presiding judge then appoints at least two other members to the EVBB using the same method for appointing precinct election clerks. Tex. Elec. Code § 87.002(b). Once appointed and staffed, the EVBB is responsible for receiving the mail-in ballots from the early voting clerk, and then deciding whether to accept each vote. Tex. Elec. Code §§ 87.021-.041, 87.061 (declaring the EVBB as the authority responsible for counting ballots).

If a mail-in ballot is rejected, the EVBB presiding judge is required to deliver written notice to the voter no later than the tenth day after election day. Tex. Elec. Code § 87.0431. "If a county election officer . . . determines that a ballot was incorrectly rejected or accepted by the [EVBB] before the time set for convening the canvassing authority, the

county election officer may petition a district court for injunctive or other relief as the court determines appropriate.” Tex. Elec. Code § 87.127(a).

II. Procedural History.

This action was initially filed in the 381st Judicial District Court of Starr County, Texas, on April 11, 2018, Cause No. DC-18-189. The initial plaintiffs were Leticia Garza Galvan and Martie Garcia Vela. *See* Dkt. No. 1-5. Defendant Rolando Pablos, the then-Texas Secretary of State, was sued in his official capacity and was served with Plaintiff’s Original Petition on April 13, 2018. Dkt. No. 1 at 1. The other defendants named, Armandina Martinez, Alma Garcia, Alicia Dougherty Nos. 1 & 2, and Yolanda Martinez, were sued in their official and individual capacities. *Id.* At the time this suit was filed, Galvan and Vela also filed an election contest, captioned *Galvan v. Vera*, No. DC-18-186, in the 229th Judicial District of Texas.² Dkt. No. 1-5 ¶ 57.

After a ruling from the Court dismissing the Galvans from the case for lack of standing, *see* Minute Entry for Motion Hearing Held on March 19, 2019, the operative complaint was amended to add current-named plaintiffs Federico Flores, Jr., Maria Guerrero, and Vicente Guerrero, who allege that they submitted mail-in ballots in the 2018 Democratic primary, but that their ballots were improperly rejected due to perceived signature discrepancies. *See generally* Dkt. No. 58. As the initial plaintiffs did, current named Plaintiffs contend that Section 87.401 of the Texas Election Code violates due process and equal protection principles because the Texas Legislature granted exclusive authority to EVBBs to accept or reject ballots without expressly requiring a specific process for voters to cure errors with their mail-in ballots where an EVBB rejects a voter’s

² Galvan and Vela lost their election contest at the district court, a ruling upheld on appeal by the Fourth Court of Appeals in San Antonio, Texas. *See Galvan v. Vera*, No. 04-18-00309-CV, 2018 WL 4096383 (Tex. App.—San Antonio Aug. 29, 2018, no pet.) (not reported).

mail-in ballot, in violation of due process and equal protection provisions of the federal Constitution. See Dkt. No. 58 ¶¶ 46-51; 52-55.³

ARGUMENT AND AUTHORITIES

I. Standard of Review.

Federal courts favor granting summary judgment where no genuine fact issue exists. See, e.g., *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986) (“Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole[.]”). The Supreme Court teaches that courts should grant summary judgment “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Celotex Corp.*, 477 U.S. at 322.

Disputes are genuine only where “a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Of course, [t]he movant bears the burden of identifying those portions of the record it believes demonstrate the absence of a genuine issue of material fact.” *Triple Tee Golf, Inc. v. Nike, Inc.*, 485 F.3d 253, 261 (5th Cir. 2007) (citation omitted). But where, as here, the burden of proof at trial lies with the nonmoving party, a defendant may satisfy its initial burden by “‘showing’—that is, pointing out to this Court—that there is an absence of evidence to support the nonmoving party’s case.” See *Celotex Corp.*, 477 U.S. at 325; *Nat’l Ass’n of Gov’t Emps. v. City Pub. Serv. Bd. of San Antonio, Tex.*, 40 F.3d 698, 712 (5th Cir. 1994).

³ Plaintiffs’ live pleading includes a third count amounting to an as-applied challenge of actions by the Starr County EVBB, but fairly read, Plaintiffs’ count three does not make a claim against the Texas Secretary of State. See Dkt. No. 58 ¶¶ 56-59; see also Dkt. No. 43 at 3 (explaining that Plaintiffs’ count three asserts arguments against the Starr County EVBB for the manner in which the EVBB reviewed carrier envelopes).

A defendant must demonstrate the absence of a genuine issue of material fact to win summary judgment, but it need not negate the elements of a plaintiff's case to carry their burden here. *Boudreaux v. Swift Transp. Co.*, 402 F.3d 536, 540 (5th Cir. 2005) (citation omitted). If a defendant meets its Rule 56 burden, the plaintiff must identify *specific* evidence in the record and articulate how that evidence supports his claim. *Baranowski v. Hart*, 486 F.3d 112, 119 (5th Cir. 2007). Plaintiffs cannot satisfy the burden by pointing out “some metaphysical doubt as to the material facts, by conclusory allegations, by unsubstantiated assertions, or by only a scintilla of evidence.” *Boudreaux*, 402 F.3d at 540 (quotation omitted).

II. The Secretary of State Is Not a Proper Party.

Plaintiffs have not met their burden on two of the three threshold standing requirements. To establish standing, a plaintiff must show: (1) an actual or imminent, concrete and particularized injury-in-fact; (2) that is fairly traceable to the defendant's challenged action; and (3) that is likely to be redressed by a favorable decision. *Friends of the Earth, Inc. v. Laidlaw Envt'l. Servs. (TOC), Inc.*, 528 U.S. 167, 180–81 (2000). Each element is “an indispensable part of the plaintiff's case.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). For the reasons discussed below, Plaintiffs lacks standing to bring claims against the Secretary of State because they have not alleged a fairly traceable injury. *See Friends of the Earth*, 528 U.S. at 180–81.

A. The Secretary of State does not supervise EVBBs.

The Secretary of State does not have a hand in county-level appointments of EVBBs, delivering or receiving mail-in ballots, or determining the validity of mail-in ballots. Plaintiffs concern themselves with the actual or potential conduct of the Starr County EVBB—not any actions of the Secretary of State. As noted above, the Starr County

EVBB was an independent body created through appointments at the *county level* pursuant to authority granted specifically to counties by the Texas Legislature. EVBB members are not part of the Texas Secretary of State's Office nor are they employees or agents of the Secretary of State. EVBBs do not carry out their statutorily required functions at the behest or under the supervision of the Secretary of State. Indeed, it is the EVBB, not the Secretary of State, who received mail-in ballots from the county-level early voting clerk, determined the validity of ballots, and counted them. And it was a county-level official who had authority to review any ballot challenged and determine whether to seek judicial relief. *See* Tex. Elec. Code § 87.127(a).

Plaintiffs' allegations regarding the Secretary of State do not suffice to establish that the Secretary of State is a proper party. In the analogous context of a sovereign immunity defense brought by state officers sued in federal court, courts have dismissed claims when the individual officer sued lacked the requisite connection with proceedings to enforce the challenged statute. *Cf. Children's Healthcare is a Legal Duty, Inc. v. Deters*, 92 F.3d 1412, 1415-16 & n.10 (6th Cir. 1996) (holding that *Ex Parte Young* exception to sovereign immunity did not apply because attorney general had not commenced nor threatened to commence proceedings against plaintiffs under challenged law and because state "delegate[d] the enforcement of the challenged statutes to local prosecutors, not the Attorney General"); *Long v. Van de Kamp*, 961 F.2d 151, 152 (9th Cir. 1992) (per curiam) (explaining that under *Ex Parte Young*, there must be a connection between the defendant official and the unconstitutional statute's enforcement, including the official's threatened enforcement; "general supervisory powers" are not sufficient to establish required enforcement connection").

Despite the clear statutory delegation of authority by the Texas Legislature to county level EVBBs, Plaintiffs press forward arguing that the Secretary of State is the chief election officer in Texas. Dkt. No. 58 ¶ 10 (citing Tex. Elec. Code § 31.001). Critically, however, aside from the sole reference to the designation of the Secretary of State as the “chief election officer” for Texas, Plaintiffs do not and cannot identify any enforcement authority granted to the Secretary of State over EVBBs relevant to this lawsuit. That is because the Texas Legislature granted exclusive authority to county level officials to operate EVBBs. The EVBBs and local elections officials, not the Secretary, have the final authority with respect to the signature comparison mandated by statute. Nor do Plaintiffs point to any specific statutory language authorizing the Secretary of State to act against EVBBs by issuing orders concerning the counting or acceptance of mail-in votes.

Because Plaintiffs demonstrate neither a connection between the Secretary of State and the EVBB actions at issue in this case nor some imminent unconstitutional enforcement action by the Secretary of State, Plaintiffs cannot maintain their suit against the Secretary of State. Their alleged injuries are not at all traceable to any actions that the Secretary of State has taken or has failed to take. *See, e.g., Inclusive Communities Project, Inc. v. Abbott*, 2018 WL 2415034, at *6 (N.D. Tex. May 29, 2018) (holding that group lacked standing to sue Governor Abbott where challenged provisions of law “do not provide Governor Abbott with the authority or ‘definite responsibilities’ to enforce the Statute.”); *John Does #1-7 v. Abbott*, 345 F. Supp. 3d 763, 773 (N.D. Tex. 2018) (“Because Plaintiffs are unable to show how their alleged injuries are fairly traceable to Governor

Abbott’s specific conduct, this Court joins other courts in declining to find traceability based solely on an official[’]s general authority to enforce a state’s laws.”).⁴

III. Plaintiffs Lack Standing Because Their Injuries Would Not Be Redressed by an Injunction.

Plaintiffs also have failed to allege a case or controversy between them and the Secretary of State for a different reason: they have no viable claim for prospective injunctive relief, even against a properly named party.

The Supreme Court and the Fifth Circuit have repeatedly held that past harms are insufficient to create standing to seek prospective injunctive relief. *Los Angeles v. Lyons*, 461 U.S. 95, 105-07 (1983); *O’Shea v. Littleton*, 414 U.S. 488, 495-96 (1974); *Deutsch v. Annis Enters., Inc.*, 882 F.3d 169, 172 (5th Cir. 2018) (per curiam); *Machete Prods., L.L.C. v. Page*, 809 F.3d 281, 288 (5th Cir. 2015). To obtain prospective injunctive relief, a plaintiff has the burden to establish standing by putting on evidence that the “threatened injury is ‘certainly impending’” or that there is a “‘substantial risk’ that the harm will occur.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (quoting *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409, 414 n.5 (2013)).

⁴ Plaintiffs have previously pointed to *OCA-Greater Houston v. Tex.*, 867 F.3d 604 (5th Cir. 2017) for the proposition that the Secretary of State is a proper party. But *OCA-Greater Houston* addressed whether the Secretary was a proper party to a facial challenge where an organization challenged a state election statute as violating a federal statute that allegedly impacted its members. *OCA-Greater Houston*, 867 F.3d at 612-13. Specifically, the state statute at issue in *OCA-Greater Houston* barred a voter’s son from serving as the voter’s interpreter because the son was not registered to vote in the same county as his mother. During the litigation, the voter passed away, ending the 42 U.S.C. Section 1983 claim, and leaving only a facial challenge by OCA-Greater Houston brought pursuant to Section 208 of the Voting Rights Act. After analyzing organizational standing and the Secretary of State’s redressability arguments, the Fifth Circuit found that the Secretary of State was the proper party for the facial challenge under Section 208 of the VRA. This case, however, raises both a facial challenge and an as-applied challenge for alleged violations of personal constitutional rights, *i.e.*, due process and equal protection of law, not a purported violation of a federal statute brought by an organization to vindicate rights statewide. *OCA-Greater Houston* should not be extended beyond the unique factual circumstances presented there.

In *Deutsch*, for example, a man who used a wheelchair alleged a violation of the Americans with Disabilities Act when he encountered several physical obstacles while entering a women's hair salon. 882 F.3d at 172. The Court dismissed his lawsuit for lack of standing because he failed to demonstrate that he ever intended to visit the salon again. *Id.* at 174. As the Court stated, “[m]erely having suffered an injury in the past is not enough; the plaintiff must show a ‘real or immediate threat that the plaintiff will be wronged again.’” *Id.* at 173 (quoting *Lyons*, 461 U.S. at 111).

This “real or immediate threat” element of standing is missing here. In sworn deposition testimony, Plaintiffs have affirmatively disclaimed an intent to vote by mail in future elections. See Ex. A at 20:21-25; 21:9-19; 23:9-18; Ex. B at 14:17-22; 19:16-18; Ex. C at 9:14-23. And the procedures for voting by mail are the only procedures at issue in this lawsuit; Plaintiffs do not challenge the procedures for submitting ballots in person or any other method. See Dkt. No. 58 ¶¶ 46-51; 52-55. Accordingly, no ruling from the Court will redress Plaintiffs’ injuries because they do not intend to vote by mail again in any election on a going forward basis. They therefore lack standing to sue for prospective injunctive relief. See *Deutsch*, 882 F.3d at 173.

IV. Texas Election Laws Are Constitutionally Sound.

Even if Plaintiffs could meet their burden of establishing traceability and redressability, for the reasons discussed below, their claims still fail on the merits when analyzed under the *Anderson/Burdick* balancing test.

A. State election laws are reviewed under the *Anderson/Burdick* balancing test.

“[T]he Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections.” *Reynolds v. Sims*, 377 U.S. 533, 554 (1964).

“It does not follow, however, that the right to vote in any manner . . . [is] absolute.” *Burdick*, 504 U.S. at 433.

The Supreme Court has observed that “[c]ommon sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections; ‘as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.’” *Burdick*, 504 U.S. at 433 (quoting *Storer v. Brown*, 415 U.S. 724, 730 (1974)). Thus, because all election regulations impose some burden upon individual voters not every voting regulation is subject to strict scrutiny. *See, e.g., Veasey v. Abbott*, 830 F.3d 216, n.46 (5th Cir. 2016) (citing *McDonald v. Bd. of Election Comm’rs of Chicago*, 394 U.S. 802 (1969), for the proposition that rational-basis review applies when examining different methods of casting votes).

To that end, federal courts have recognized that a “flexible standard [of review] applies” when analyzing state election laws that may burden the right to vote. *Burdick*, 504 U.S. at 434. The so-called *Anderson/Burdick* balancing test, an analysis arising from the Supreme Court’s holdings in *Anderson v. Celebrezze*, 460 U.S. 780 (1983) and *Burdick*, 504 U.S. 428 (1992), requires “[a] court considering a challenge to a state election law” to “weigh the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments . . . against the precise interests put forward by the State . . . taking into consideration the extent to which those interests make it necessary to burden the plaintiff’s rights.” *Burdick*, 504 U.S. at 434.

Under this “flexible standard” of review, strict scrutiny applies only when the right to vote is “subjected to ‘severe’ restrictions.” *Id.* However, “when a state election law provision imposes only reasonable, nondiscriminatory restrictions upon the First and

Fourteenth Amendment rights of voters, the State's important regulatory interests are generally sufficient to justify the restrictions." *Id.*; see also *Celebrezze*, 460 U.S. at 788.

When evaluating state election laws, courts consider the state's election regime as a whole, including aspects that mitigate hardship that might be imposed by the challenged provisions. See *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 199 (2008) (considering mitigating aspects of Indiana's election laws); see also *Ohio Democratic Party v. Husted*, 834 F.3d 620, 627-28 (6th Cir. 2016) (recognizing the numerous opportunities to cast a ballot as a mitigating factor to a law altering early voting rules).

Proponents, such as the Plaintiffs in this case, advancing a facial challenge to state election law "bear a heavy burden of persuasion." *Crawford*, 553 U.S. at 200.

B. The burden on voting rights is minimal.

Plaintiffs argue that the mail-in ballot provisions of the Texas Election Code violate the Due Process Clause because the statute fails to provide for notice that a voter is being disenfranchised and given an opportunity to be heard. What Plaintiffs' argument misses is that "[o]rdinary and widespread burdens [on the right to vote], such as those requiring 'nominal effort' of everyone, are not severe." *Crawford*, 553 U.S. at 225 (Scalia, J., concurring). "Burdens are severe if they go beyond the merely inconvenient." *Id.*

As an initial matter, mail-in voters are given notice that their genuine and accurate signatures are required. See Tex. Elec. Code § 87.041(b)(2). The EVBB will also turn to signatures on file with the county clerk or voter registrar, if necessary to evaluate a signature. Tex. Elec. Code § 87.041(e). After voting, if a ballot is rejected for a signature mismatch, state law requires notice be sent to the voter. Tex. Elec. Code § 87.0431. And, if the signature needs to be updated to cure any mismatch for future elections, the voter

can update the signature on file with the county clerk or voter registrar. Tex. Elec. Code § 87.041(e).

The burden to make sure that a signature matches when signing an absentee ballot is no more a burden than the burden placed on in-person voters, who must travel to a designated polling place on Election Day, often necessitating taking time off of work, arranging for childcare, and waiting in line.

The Supreme Court has previously concluded that similar laws, requiring nominal effort of everyone, are not severe. For example, in *Crawford*, the Supreme Court considered whether a state's voter-identification law, which required in-person voters to present photo identification, unconstitutionally burdened the right to vote. *Crawford*, 553 U.S. at 185. In an opinion authored by Justice Stevens, the Court found that "the inconvenience of making a trip to the [Bureau of Motor Vehicles], gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase of the usual burdens of voting." *Id.* at 198.

Here, the challenged law does not run afoul of *Crawford*. Rather, it requires only that vote-by-mail voters take the initiative to update their signatures—at any time prior to an election—and make sure they are using the same signature when signing their mail-in ballot. The requirements are no more than one of the "usual burdens of voting." *Crawford*, 553 U.S. at 198. Moreover, in *Crawford*, the Supreme Court recognized that the voter-identification law at issue might place "a somewhat heavier burden . . . on a limited number of persons," but the Court declined to consider these burdens because "on the basis of the evidence in the record it [was] not possible to quantify either the

magnitude of the burden on this narrow class of voters or the portion of the burden imposed on them that [was] fully justified.” *Crawford*, 553 U.S. at 199-200.

So too here.

There is no competent evidence suggesting the actual number of voters whose genuine signatures were improperly rejected, and at least two state courts—one a district court and one an appellate court—have rejected challenges to the results of the election that included a challenge concerning mail-in ballots.

At bottom, Plaintiffs’ complaints about properly cast votes rejected in the signature-comparison process do not yield a harm large enough to outweigh Texas’s interest in maintaining the integrity of elections.

C. Plaintiffs disregarded the process available to them.

Plaintiffs argue that the EVBB rejected “an incredible 13.5%” of mail-in ballots submitted in the March 2018 democratic primary. Dkt. No. 58 ¶ 4. But their protestations that they lack any means of challenging rejected ballots directly conflict with Texas law. “If a county election officer . . . determines that a ballot was incorrectly rejected or accepted by the [EVBB] before the time set for convening the canvassing authority, the county election officer may petition a district court for injunctive or other relief as the court determines appropriate.” Tex. Elec. Code §§ 87.127(a), 31.091(1).

Thus, Plaintiffs could have petitioned to the county election officer—in this case the Starr County Elections Administrator John Rodriguez⁵—and raised their concerns with their rejected ballots to ascertain whether the county election officer would file suit to challenge the EVBB’s decisions. But Plaintiffs concede that they never spoke with any

⁵ See <http://www.co.starr.tx.us/page/starr.Elections>.

official in Starr County—or for that matter, any official in the Secretary of State’s office—after their ballots were rejected. Ex. A at 17:12-22; 19:14-16; 20:7-10; Ex. B, at 14:17-22; 19:16-18; Ex. C at 12:10-25–13:1-10. They cannot claim that the procedures prescribed by Texas law are inadequate when they completely failed to take advantage of those procedures. *See, e.g., Santana v. City of Tulsa*, 359 F.3d 1241, 1244 (10th Cir. 2004) (“A party cannot create a due process claim by ignoring established procedures.”); *see also, e.g., Dubuc v. Twp. of Green Oak*, 406 F. App’x 983, 989 (6th Cir. 2011) (holding that property owners who failed to take advantage of a zoning board’s postdeprivation appeals procedures could not claim that those procedures violated due process); *Herrell v. Benson*, 261 F. Supp. 3d 772, 777–78 (E.D. Ky. 2017) (noting that the plaintiff “was afforded due process, but waived his right to it by refusing to participate in the process offered to him.”).

D. The State’s important interests justify the challenged law.

When restrictions on due process rights of voters are reasonable and not a severe burden—as in this case—the State’s important regulatory interests are generally sufficient to justify the restriction. *Burdick*, 504 U.S. at 434. Here, Texas’s mail-in ballot requirements promote Texas’s interests in—

- Preserving the integrity of its election process;
- Maintaining an orderly election process and preventing dilution of votes by those who are not eligible to vote; and,
- Ensuring administrative convenience and efficiency.

Texas “indisputably has a compelling interest in preserving the integrity of its election process.” *Eu v. San Francisco Cty. Democratic Central Comm.*, 489 U.S. 214, 231 (1989); *see also Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (acknowledging “the State’s

compelling interest in preventing voter fraud”); *Veasey v. Abbott*, 830 F.3d 216, n.46 (5th Cir. 2016) (“[T]he greatest fraud risk exists when unauthorized persons direct an elderly, immobile voter’s choices on a mail-in ballot. That the ballots could get lost or stolen from the mail is no more a risk than the loss of a Social Security check.”); *Crawford*, 553 U.S. at 225 (Souter, J., dissenting) (noting that “absentee-ballot fraud . . . is a documented problem”); *Griffin v. Roupas*, 385 F.3d 1128, 1131 (7th Cir. 2004) (“Voting fraud . . . is facilitated by absentee voting.”).

Plainly stated: Texas has a weighty, undeniable interest in ensuring that only eligible voters cast mail-in ballots, necessitating various requirements to guarantee the reliability of mail-in votes and provide for finality on Election Day.

Because complying with the nominal effort of properly signing a ballot is not a harm that outweighs Texas’s weighty interests in protecting the franchise, Plaintiffs’ due process claim fails.

V. Plaintiffs’ Equal Protection Claim Also Fails Under *Anderson/Burdick*.

Anderson/Burdick applies to Equal Protection claims directed at state voting laws. *Stringer v. Pablos*, 320 F. Supp. 3d 862, 897–98 (W.D. Tex. 2018) (citing several election law cases applying the *Anderson/Burdick* framework). Plaintiffs’ equal protection challenge fails for the same reasons their due process challenge must be rejected—“the character and magnitude of the asserted injury” is slight and Texas’s regulatory interests sufficiently weighty to justify the restrictions. Plaintiffs’ equal protection challenge fails for an additional reason—the categories of voters Plaintiffs allege are unequally treated are not “similarly situated” for purposes of the law challenged in this action.

Plaintiffs compare mail-in voters to provisional ballot voters, in attempt to contrast the process afforded. Dkt. No. 58 ¶¶ 34-40. The two are not the same. A mail-in voter is a person already qualified to vote. *E.g.*, Tex. Elec. Code ch. 82 (listing categories of eligible “qualified” voters and identifying qualifications for such qualified voters to early vote by mail). A provisional voter, on the other hand, is a person who lacks credentials evidencing qualifications to vote in a precinct. *See* Tex. Elec. Code ch. 63.

A key difference between the two is that provisional ballot voters generally have already proven their identification when they show up to vote in person. The exception is for provisional ballots because of a lack of identification. For such votes to count, the voter has to show proper identification at the voter registrar’s office. The same cannot be said of mail-in ballot voters, which is why the state has so many safeguards in place to verify identity.

The challenges and impediments to voting by mail raise concerns different from an in-person voter claiming authorization to vote and who lacks adequate credentials to demonstrate a right to vote. The two sets of voters are not similarly situated, and thus, cannot serve as comparators for purposes of an equal protection violation.

Thus, even if Plaintiffs could identify something more than harm from the nominal effort required to outweigh Texas’s interest in protecting its elections, Plaintiffs’ equal protection claim would still fail for lack of a valid comparator.

CONCLUSION

For the foregoing reasons, Plaintiffs’ claims against the Texas Secretary of State should be dismissed.

Dated: July 29, 2019.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed electronically with the Court and delivered by CM/ECF on July 29, 2019 to all counsel of record.

/s/ Michael R. Abrams

Michael R. Abrams

Assistant Attorney General

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

FEDERICO FLORES, JR.,	§	
MARIA GUERRERO, and	§	
VICENTE GUERRERO,	§	
Plaintiffs,	§	
	§	
	§	CIVIL ACTION NO.7:18-cv-113
	§	
v.	§	
	§	
TEXAS SECRETARY OF STATE and	§	
ARMANDINA MARTINEZ, ALMA	§	
GARCIA, ALICIA DOUGHERTY NO.	§	
1, ALICIA DOUGHERTY NO. 2,	§	
YOLANDA MARTINEZ,	§	
Defendants.	§	

ORAL DEPOSITION OF

VICENTE GUERRERO

JULY 25, 2019

ORAL DEPOSITION OF VICENTE GUERRERO, produced as a witness at the instance of the Defendant, and duly sworn, was taken in the above-styled and -numbered cause on the July 25th day of July, 2019, from 12:40 p.m. to 1:23 p.m., before TOI K. DOWELL, CSR, in and for the State of Texas, reported by machine shorthand at the home of Vicente Guerrero and Maria Guerrero, 19 Florez Street, Roma, Texas, 78584 pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

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ALSO PRESENT: Nelson Troncoso, Interpreter
Mrs. Maria Guerrero

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(Interpreter Sworn.)

VICENTE GUERRERO,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. ABRAMS:

Q Good afternoon, sir.

A Good afternoon.

Q My name is Michael Abrams, and I represent the

Texas Secretary of State in this lawsuit.

Sir, could you please state your name for the

record.

A Vicente Guerrero.

Q Mr. Guerrero, how old are you?

A Well, I was born on August 11th, 1935. So I'm

80-something years old; 83 or 84, that's my age. I'm old

already.

Q I'm just a little younger, but not very much.

Mr. Guerrero, have you ever been deposed before?

A No. No.

Q So I just want to go over some of the ground rules

for how depositions work so that this can go smoothly.

A Okay.

Q So if you could, please give a verbal answer to my

questions rather than shaking your head. That way the court

reporter can get a clear record.

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And that goes to actually a second thing. Because

the court reporter is taking everything down, we would

appreciate it if you could wait until the translator has

finished translating my question before you start your

answer; and in turn, I will wait until you're completely

finished before I ask my next question.

Is that okay?

A Yes. Agree, yes.

Q And do you understand that you have taken an oath,

and it is the same oath that you would be taking in a court

of law?

A The same as in a court, yes.

Q I don't think that this deposition will go very

long; but if for any reason you need to take a break, please

let me know, and we'll find the time to make sure you can

take a break.

Have you ingested anything or taken any medication

that would prevent you from answering my questions this

afternoon and understanding my questions?

A No.

MRS. GUERRERO: (Through the interpreter) You

did take some medication, but you're saying no.

A Yes, I did take some medication; but, I mean, I'm

going to be speaking the truth. So that's it, and I might

say something else.

<p>6</p> <p>1 Q (By Mr. Abrams) Okay. And the medication doesn't</p> <p>2 prevent you from understanding my questions or being able to</p> <p>3 give honest answers, correct?</p> <p>4 A No, no, no, no.</p> <p>5 Q Okay. Mr. Guerrero, what did you do to prepare for</p> <p>6 today's deposition?</p> <p>7 A No, nothing. I know this has to do with what I</p> <p>8 signed; my signature. That's it. That's the only thing.</p> <p>9 Q Okay. Did you speak with anyone prior to today's</p> <p>10 deposition?</p> <p>11 A No, no one.</p> <p>12 Q And did you review any documents before your</p> <p>13 deposition?</p> <p>14 A No. Just that letter that I got, and I signed it,</p> <p>15 and that's it.</p> <p>16 Q Just to clarify, what letter are you referring to?</p> <p>17 A When they send me that paper to vote.</p> <p>18 Q Are you referring to your application?</p> <p>19 A Yes, when I signed it. That's it.</p> <p>20 Q So you reviewed your ballot application before</p> <p>21 today's deposition?</p> <p>22 A No, no. I mean the ballot was the only thing I</p> <p>23 signed, and that's it.</p> <p>24 Q Do you have the document with you that you</p> <p>25 reviewed?</p>	<p>8</p> <p>1 Since I became a citizen.</p> <p>2 Q And have you ever voted in person?</p> <p>3 A In person? Yes, one time; but that's it.</p> <p>4 Q Okay. And so for the rest of the time that you</p> <p>5 vote, do you -- how do you vote?</p> <p>6 A No. That's it. That's the only time I voted. It</p> <p>7 was just that time. I have not voted. It was just that one</p> <p>8 time that I voted. That's it.</p> <p>9 Q So just to make sure I understand, you have only</p> <p>10 voted in the United States -- let me scratch that and start</p> <p>11 over.</p> <p>12 How many times have you voted in an election in</p> <p>13 Starr County?</p> <p>14 A I don't remember, but I have voted before. I don't</p> <p>15 remember how many times, but I have voted already.</p> <p>16 Q Would you say you voted more than five times in the</p> <p>17 past?</p> <p>18 A Maybe. I mean, I voted for the presidents and --</p> <p>19 and others.</p> <p>20 Q Do you recall submitting an application to vote by</p> <p>21 mail in the 2018 democratic primary elections?</p> <p>22 A No. Just that one in person. I go to the court,</p> <p>23 and I signed there. We're talking about the presidential</p> <p>24 elections, when those take place.</p> <p>25 Q So just to -- I'm not quite sure I'm understanding</p>
<p>7</p> <p>1 A I don't think we have it, right? No, no. It's</p> <p>2 been a long time already.</p> <p>3 Q Mr. Guerrero, how long have you lived in Starr</p> <p>4 County?</p> <p>5 A Just a very short period of time. Since 1966.</p> <p>6 Q Okay. And Mr. Guerrero, are you a United States</p> <p>7 citizen?</p> <p>8 A I became a U.S. citizen, yes.</p> <p>9 Q When did you become a U.S. citizen?</p> <p>10 (Witness asks Mrs. Guerrero.)</p> <p>11 MR. GARZA: He can't ask her. If he doesn't</p> <p>12 remember, he doesn't remember.</p> <p>13 A Oh, okay. Okay. I don't remember since when.</p> <p>14 Q (By Mr. Abrams) Okay. Has it been at least since</p> <p>15 -- have you been a U.S. citizen since at least 2000?</p> <p>16 A Yes. I think I've been a citizen for 20 years now.</p> <p>17 Maybe more, but we'll go with 20.</p> <p>18 Q Mr. Guerrero, are you registered to vote in Starr</p> <p>19 County?</p> <p>20 A Yes.</p> <p>21 Q And how long have you been voting in Starr County?</p> <p>22 A I've been voting for a long time already. It's</p> <p>23 been years.</p> <p>24 Q How long?</p> <p>25 A It's been -- I've been voting for a long time.</p>	<p>9</p> <p>1 when you voted in the -- when you have voted in the past, do</p> <p>2 you vote -- do you go in person to submit your ballot, or do</p> <p>3 you submit a ballot in the mail?</p> <p>4 A Okay. It was just that one time that I did it by</p> <p>5 mail. The rest has been in person.</p> <p>6 I went in person to submit my vote. They present</p> <p>7 me with that ballot, and that's where I vote. That's where</p> <p>8 I -- where I sign my name.</p> <p>9 Q Do you intend to vote in future elections?</p> <p>10 A If I can, yes, I'll submit my vote.</p> <p>11 Q Okay. And for those --</p> <p>12 A The -- the thing is that sometimes they schedule me</p> <p>13 for an appointment, and that's when I go and vote in person.</p> <p>14 Q So for future elections, do you intend to vote in</p> <p>15 person or by mail?</p> <p>16 A I'm not going to do it by mail anymore. Not by</p> <p>17 mail, no.</p> <p>18 Q So you --</p> <p>19 A I'd rather go in person.</p> <p>20 Q So in future elections, your intent is to go vote</p> <p>21 in person?</p> <p>22 A I'll go in person. I've gone -- I have gone in</p> <p>23 person all the time.</p> <p>24 Q And your intention is in the future to go in</p> <p>25 person?</p>

<p>10</p> <p>1 A Yes. Yes, in person. Not by mail anymore, no.</p> <p>2 Q Okay. Mr. Guerrero, I'd like to show you what</p> <p>3 we'll mark as Exhibit 1 for your deposition.</p> <p>4 (V. Guerrero Exhibit No. 1 was marked.)</p> <p>5 A This is my signature right here (indicating).</p> <p>6 Q (By Mr. Abrams) And I'll represent that this is a</p> <p>7 Declaration that you provided in this matter in which you</p> <p>8 attach your Declaration -- or you attach your copy of the</p> <p>9 Application to Vote by Mail and a copy of the envelope for</p> <p>10 your ballot for the March 2018 primary elections.</p> <p>11 Do you recognize this Declaration?</p> <p>12 A No. I used to read a lot. But, no, this is my</p> <p>13 signature.</p> <p>14 Q Did you -- do you see the bullet points, the types</p> <p>15 -- the information in Paragraphs 1 through 3?</p> <p>16 A Yes.</p> <p>17 Q Did you write that?</p> <p>18 A This? I don't even know what it says here. I</p> <p>19 don't know either.</p> <p>20 Q Okay. I'd like for you to turn to the next page of</p> <p>21 Exhibit 1, please. Thank you.</p> <p>22 A Okay.</p> <p>23 Q And I'll represent that this is an Application for</p> <p>24 Ballot by Mail, and I'd like for you to look at the box</p> <p>25 No. 10.</p>	<p>12</p> <p>1 her why. We asked her why, if we signed the proper way.</p> <p>2 Those were our signatures.</p> <p>3 Q And when you say the woman, do you recall who that</p> <p>4 was who told you that the application was rejected?</p> <p>5 A My wife. I'm talking about my wife.</p> <p>6 Q Okay. So your wife was the one who told you?</p> <p>7 A Yes to your question, but they approached her.</p> <p>8 They came to her, and then they told her that we had been</p> <p>9 rejected. We questioned why. Those were our signatures.</p> <p>10 Q So at the same time that your wife learned that her</p> <p>11 ballot had been rejected, you also learned that your ballot</p> <p>12 had been rejected; is that correct?</p> <p>13 A Yes. We found out, and we ask why, and this is our</p> <p>14 signature.</p> <p>15 Q After you found out that your ballot application</p> <p>16 for the March 2018 primary had been rejected, did you speak</p> <p>17 with anyone in the Starr County election office about your</p> <p>18 rejected ballot?</p> <p>19 A No, no one. No.</p> <p>20 Q Did you speak with anyone in John Rodriguez's</p> <p>21 office after you learned that your ballot application had</p> <p>22 been rejected?</p> <p>23 A No. No one knew.</p> <p>24 Q Did you speak with anyone in the Texas Secretary of</p> <p>25 State's office?</p>
<p>11</p> <p>1 Is this your signature in box 10?</p> <p>2 A That is my signature.</p> <p>3 Q Okay. And I'd like for you to turn to the last</p> <p>4 page of Exhibit 1. And I'll represent that this is an</p> <p>5 envelope for your application.</p> <p>6 And is that your signature on this envelope?</p> <p>7 A Right here, Vicente Guerrero (indicating).</p> <p>8 Q Okay. Do you recall signing these two signatures?</p> <p>9 A Yes. Yes, these are my signatures.</p> <p>10 Q Okay. Did you -- once you signed the envelope, did</p> <p>11 you mail the ballot yourself, or did someone mail the ballot</p> <p>12 application for you?</p> <p>13 A We send it by mail.</p> <p>14 Q Mr. Guerrero, did you ever receive a notification</p> <p>15 that your application -- that your ballot had been rejected?</p> <p>16 A No.</p> <p>17 Q Okay. Did you ever learn, at any point, that this</p> <p>18 ballot application, which is in Exhibit 1, had been</p> <p>19 rejected?</p> <p>20 A Later we found out that it had been rejected, and I</p> <p>21 don't know why. I mean, we voted. We had our signatures;</p> <p>22 my wife's signature.</p> <p>23 Q How did you learn that your application had been</p> <p>24 rejected?</p> <p>25 A The lady told us. The lady told us. Then we asked</p>	<p>13</p> <p>1 A No, no one.</p> <p>2 Q Okay. So just -- you did not speak with anyone</p> <p>3 after learning that your ballot application had been --</p> <p>4 A I had signed for it, I send it, and that was it.</p> <p>5 With no one, no.</p> <p>6 Q Let me make sure -- just to make sure we get a</p> <p>7 clear record.</p> <p>8 So you did not speak with anyone after learning</p> <p>9 that your ballot had been rejected?</p> <p>10 A With no one. No, with no one.</p> <p>11 Q I'd like to show you what we'll mark as Exhibit 2.</p> <p>12 (V. Guerrero Exhibit No. 2 was marked.)</p> <p>13 Q (By Mr. Abrams) And I'll represent this is a</p> <p>14 Notice of Rejected Ballot with -- regarding your ballot</p> <p>15 application.</p> <p>16 Do you recall ever receiving this document?</p> <p>17 A No, no.</p> <p>18 Q Okay. Have you seen this document before today?</p> <p>19 A No, I had not seen anything.</p> <p>20 Q Mr. Guerrero, have you understood the questions</p> <p>21 that I've asked today?</p> <p>22 A Yes.</p> <p>23 Q And have I been courteous with you today?</p> <p>24 A Very well, thank you.</p> <p>25 MR. ABRAMS: We pass the witness.</p>

<p style="text-align: right;">14</p> <p>1 EXAMINATION</p> <p>2 BY MR. GARZA:</p> <p>3 Q Good afternoon. My name is Jose Garza, and I</p> <p>4 represent Armandina Martinez, Alma Garcia, Alicia Dougherty,</p> <p>5 Alicia Dougherty No. 2, and Yolanda Martinez.</p> <p>6 THE INTERPRETER: The second one.</p> <p>7 (Counsel shows the interpreter document with</p> <p>8 Defendants' names.)</p> <p>9 Q (By Mr. Garza) Do you know Armandina Martinez?</p> <p>10 A No. I don't know anyone.</p> <p>11 Q Did you ever tell Armandina Martinez who you were</p> <p>12 going to vote for in 2018?</p> <p>13 A No, I did not mention anything to her, no.</p> <p>14 Q And is there any reason Ms. Martinez --</p> <p>15 A And since your vote is confidential, you cannot</p> <p>16 mention it to anyone. They tell us that when we -- they</p> <p>17 tell you not to tell anyone, no, that you voted for such</p> <p>18 person. So --</p> <p>19 Q And the same thing is true as to Alma Garcia and</p> <p>20 Alicia Dougherty No. 1, and Alicia Dougherty No. 2, and</p> <p>21 Yolanda Martinez; is that correct?</p> <p>22 THE INTERPRETER: Alma Martinez?</p> <p>23 MR. GARZA: Alma Garcia, Alicia Dougherty</p> <p>24 No. 2.</p> <p>25 A No one.</p>	<p style="text-align: right;">16</p> <p>1 bottom of the page?</p> <p>2 A No.</p> <p>3 Q Do you know who Ms. Vela is?</p> <p>4 A No. I don't know anyone.</p> <p>5 Q Okay.</p> <p>6 A They just give me the ballot; I go over to the</p> <p>7 ballot box; I sign; and I just put in the box; and that's</p> <p>8 it.</p> <p>9 I don't know who those people are.</p> <p>10 Q Okay. Mr. Guerrero, can you read what the name is</p> <p>11 at the bottom of the page?</p> <p>12 A It says "Roma." No. Okay.</p> <p>13 Q Let's turn to the last page.</p> <p>14 A Like I said, I don't know anyone. They just give</p> <p>15 me the ballot. I sign it, and put in the back, and I take</p> <p>16 off.</p> <p>17 Q Let's turn to the last page.</p> <p>18 A There's my signature right there (indicating).</p> <p>19 Q And at the bottom of the page, Mr. Guerrero, there</p> <p>20 is the name of another person.</p> <p>21 Can you read that for us?</p> <p>22 A It was right here, Vicente Guerrero. Somebody</p> <p>23 wrote it down there. My signature is this one over here</p> <p>24 (indicating).</p> <p>25 Q I'm sorry. But -- and I apologize for going over</p>
<p style="text-align: right;">15</p> <p>1 Q (By Mr. Garza) Do you know any reason why they</p> <p>2 know who you had voted for?</p> <p>3 MS. VELA: Objection, form.</p> <p>4 A I don't know how they would know. I mean, I just</p> <p>5 grabbed my ballot, I vote, I put my signature.</p> <p>6 I'm not going around telling anyone who I voted</p> <p>7 for.</p> <p>8 Q (By Ms. Garza) Thank you. And you mentioned that</p> <p>9 you don't know who Armandina Martinez is.</p> <p>10 Do you know Alma Garcia?</p> <p>11 A No, I don't know. I don't even know who they are.</p> <p>12 I mean, I just show up there; they give me the ballot; I</p> <p>13 sign; I vote and that's it.</p> <p>14 I don't know what -- who they are looking for.</p> <p>15 Q So let me call your attention to Exhibit No. 1 that</p> <p>16 Mr. Abrams gave you. And if you could turn to the second</p> <p>17 page.</p> <p>18 A This is my signature right here (indicating).</p> <p>19 Q Okay. If you can look at the bottom of that page,</p> <p>20 do you see a signature there?</p> <p>21 A Not here, no. But this is my signature over here</p> <p>22 (indicating).</p> <p>23 Q Yes, Mr. Guerrero. I'm not talking about your</p> <p>24 signature.</p> <p>25 Do you see that there is another signature at the</p>	<p style="text-align: right;">17</p> <p>1 this with you, Mr. Guerrero. But I just want to know,</p> <p>2 there's a person listed on that first line, and I just want</p> <p>3 to know if you can read that.</p> <p>4 A No.</p> <p>5 Q No.</p> <p>6 A No. I don't know anyone.</p> <p>7 Q Okay. Did somebody help you with your ballot when</p> <p>8 you voted in the primary of 2018?</p> <p>9 A No one. No -- I go in myself; I vote. I mean, no</p> <p>10 one is telling me "Vote for this person" or the other, this</p> <p>11 or that.</p> <p>12 If I like that person, I'll vote for that person.</p> <p>13 That's it.</p> <p>14 Q Did anybody help you read the 2018 ballot?</p> <p>15 A No. I know more or less what it says there. No</p> <p>16 one needs to tell me anything. I see the names there. I</p> <p>17 know more or less who I'm going to vote for, and that's it.</p> <p>18 No one tells me who to vote for.</p> <p>19 Q So let me just tell you that on your ballot</p> <p>20 envelope, the third page of your -- of Exhibit No. 2 -- of</p> <p>21 Exhibit No. 1 is the name of Barbara Barrios.</p> <p>22 Do you know who Barbara Barrios is?</p> <p>23 THE INTERPRETER: (Through the witness) Do you</p> <p>24 want a soda?</p> <p>25 MR. ABRAMS: It's okay. Thank you.</p>

<p>18</p> <p>1 A No, no. I don't even know these people. As for 2 example, this lady right here, I'm looking at her; I'm not 3 gonna be asking her for her name, who she is, or what her 4 name is. 5 Q (Mr. Garza) And on the prior page, it says 6 "Modesta Vela." 7 Do you know who Modesta is? 8 A No one. No, I don't know anyone. No one. 9 Q And in the May 2018 -- I'm sorry -- the March 2018 10 primary, when -- did these people that came to your house, 11 did they bring you the ballot? 12 MS. VELA: Objection, form. 13 (Witness looks to Mrs. Guerrero) 14 Q (By Mr. Garza) You can't ask. If you can remember 15 -- if you can't remember, that's fine. 16 A No, I don't remember. I don't remember. 17 Q Okay. 18 MR. GARZA: I don't have any other questions 19 for Mr. Guerrero. 20 MS. VELA: I have a few questions. 21 EXAMINATION 22 BY MS. VELA: 23 Q And Mr. Guerrero, how old are you? 24 A Eighty-three or eighty-four. 25 Q And what is your address?</p>	<p>20</p> <p>1 mail? No. I rather go to the ballot box. I'll be there, 2 and I'll do it there. 3 Q So the fact that your vote was rejected has 4 influenced your decision to no longer vote by mail? 5 MR. GARZA: Objection, form. 6 A I'm not voting by mail, no. 7 MS. VELA: That's all I have. Thank you. 8 MR. ABRAMS: We have no further questions. 9 MR. GARZA: No further questions. 10 (Deposition concluded at 1:23 p.m.) 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p>19</p> <p>1 A 19 Florez Street in Roma, Texas. 2 Q And do you receive your mail at that address? 3 A Yes, I have my mail here. 4 Q Do you usually sit outside and receive the mail? 5 A Sometimes I am. I'm sure not. Sometimes I do go 6 outside, just to be resting outside. 7 Q But your mail is delivered to this home? 8 A Yes, at this home. 9 MS. VELA: And for the record, we are at 10 the address that he just listed taking this deposition. 11 Q (By Ms. Vela) Mr. Guerrero, do you understand that 12 there is nothing wrong with voting by mail? 13 A Well, I mean, you know, now we have this big 14 problem because I voted by mail; but I don't think I'm 15 going to be voting by mail. I mean, it got -- it led to all 16 of this. So I rather just go to the ballot box. 17 Q I understand. But my question is, do you know you 18 have the right -- the legal right to vote by mail? 19 A Yes, I know I have rights. But I'm not, no. 20 Q And if the law allows you -- 21 A No. 22 Q If the law allows you to be assisted when voting by 23 mail, would you allow your wife or your daughter to assist 24 you and vote by mail? 25 A No, no. After this experience, am I voting by</p>	<p>21</p> <p>1 CHANGES AND SIGNATURE 2 WITNESS NAME: _____ DATE OF DEPOSITION: _____ 3 PAGE LINE CHANGE REASON 4 _____ 5 _____ 6 _____ 7 _____ 8 _____ 9 _____ 10 _____ 11 _____ 12 _____ 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 _____ 20 _____ 21 _____ 22 _____ 23 _____ 24 _____ 25 _____</p>

<p>22</p> <p>1 I, VICENTE GUERRERO, have read the foregoing 2 deposition and hereby fix my signature that same is true and 3 correct, except as noted above. 4 5 _____ 6 VICENTE GUERRERO 7 STATE OF _____) 8 COUNTY OF _____) 9 Before me, _____, on this day personally 10 appeared VICENTE GUERRERO, known to me (or proved to me 11 under oath or through _____) to be the person whose 12 name is subscribed to the foregoing instrument and 13 acknowledged to me that they executed the same for the 14 purposes and consideration therein expressed. 15 Given under my hand and seal of office this _____ 16 day of _____, _____. 17 18 19 20 _____ 21 NOTARY PUBLIC IN AND FOR 22 THE STATE OF _____ 23 24 25</p>	<p>24</p> <p>1 the completion of the deposition. 2 I further certify that I am neither counsel for, related 3 to, nor employed by any of the parties to the action in 4 which this proceeding was taken, and further that I am not 5 financially or otherwise interested in the outcome of the 6 action. 7 Subscribed and sworn to on this the 29th day of July, 8 2019 9 10 _____ 11 Toi K. Dowell, CSR No. 2768 12 Certified Expires 12/31/2019 13 Integrity Legal Support Solutions 14 Firm Registration No. 528 15 PO Box 245 16 Manchaca, TX 78652 17 (512)320-8690 18 (512)320-8692 (fax) 19 20 21 22 23 24 25</p>
<p>23</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 SOUTHERN DISTRICT OF TEXAS 3 MCALLEN DIVISION 4 FEDERICO FLORES, JR., § 5 MARIA GUERRERO, and § 6 VICENTE GUERRERO, § 7 Plaintiffs, § 8 § 9 § CIVIL ACTION NO.7:18-cv-113 10 § 11 v. § 12 § 13 TEXAS SECRETARY OF STATE and § 14 ARMANDINA MARTINEZ, ALMA § 15 GARCIA, ALICIA DOUGHERTY NO. § 16 1, ALICIA DOUGHERTY NO. 2, § 17 YOLANDA MARTINEZ, § 18 Defendants. § 19 20 REPORTER'S CERTIFICATE 21 ORAL DEPOSITION OF VICENTE GUERRERO 22 JULY 25, 2019 23 I, Toi K. Dowell, certified shorthand reporter in and 24 for the State of Texas, hereby certify to the following: 25 That the witness VICENTE GUERRERO was duly sworn by the officer and that the transcript of the deposition is a true record of the testimony given by the witness; I further certify that pursuant to the FRCP Rule 30(f)(1) that the signature of the Deponent X was requested by the deponent or a party before the completion of the deposition and returned within 30 days from date of receipt of the transcript. If returned, the attached Changes and Signature Page contains any changes and the reasons therefore; _____ was not requested by the deponent or a party before</p>	

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

FEDERICO FLORES, JR.,	§	
MARIA GUERRERO, and	§	
VICENTE GUERRERO,	§	
Plaintiffs,	§	
	§	
	§	CIVIL ACTION NO.7:18-cv-113
	§	
v.	§	
	§	
TEXAS SECRETARY OF STATE and	§	
ARMANDINA MARTINEZ, ALMA	§	
GARCIA, ALICIA DOUGHERTY NO.	§	
1, ALICIA DOUGHERTY NO. 2,	§	
YOLANDA MARTINEZ,	§	
Defendants.	§	

ORAL DEPOSITION OF

MARIA GUERRERO

JULY 25, 2019

ORAL DEPOSITION OF MARIA GUERRERO, produced as a witness at the instance of the Defendant, and duly sworn, was taken in the above-styled and -numbered cause on the July 25th day of July, 2019, from 12:01 p.m. to 12:38 p.m., before TOI K. DOWELL, CSR, in and for the State of Texas, reported by machine shorthand at the home of Vicente Guerrero and Maria Guerrero, 19 Florez Street, Roma, Texas, 78584 pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

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<p>6</p> <p>1 Q Did you review any documents prior to the</p> <p>2 deposition?</p> <p>3 A No.</p> <p>4 Q Did you meet with any attorneys before the</p> <p>5 deposition?</p> <p>6 A No.</p> <p>7 Q Ms. Guerrero, are you currently employed?</p> <p>8 A No.</p> <p>9 Q When was the last time you were employed?</p> <p>10 A Well, many years ago.</p> <p>11 Q What did you do?</p> <p>12 A Work on the fields. Lettuce.</p> <p>13 Q Okay. When did you move to Starr County?</p> <p>14 A It's been like 40 years already.</p> <p>15 Q And were you born in Starr County?</p> <p>16 A No. In Mexico, but I became a United States</p> <p>17 citizen already.</p> <p>18 Q And when did you become a United States citizen?</p> <p>19 A I don't remember the date, but it's been like</p> <p>20 20-something years ago. I'm not quite sure how many years.</p> <p>21 Q And Ms. Guerrero, are you married?</p> <p>22 A Yes.</p> <p>23 Q And your husband is Vicente Guerrero?</p> <p>24 A Yes.</p> <p>25 Q How long have you been married?</p>	<p>8</p> <p>1 the attorney over here, every time I sign, I don't write my</p> <p>2 complete name, Rosa. I just put the R.</p> <p>3 Q And do you see the handwriting on Bullet 4?</p> <p>4 A This right here (indicating)?</p> <p>5 Q Yes.</p> <p>6 A Yes. It's in English, right?</p> <p>7 Q Did you write this?</p> <p>8 A No, no. I don't know how to write like this.</p> <p>9 Q Okay. Well, what it says is that you were home</p> <p>10 with your husband when you voted in the March 2018 primary</p> <p>11 election, and that we both signed the application and the</p> <p>12 ballot envelope.</p> <p>13 A Yes, uh-huh.</p> <p>14 Q So is that statement accurate?</p> <p>15 A Well, not mine nor my husband's either.</p> <p>16 Q I'm sorry. What do you mean by that?</p> <p>17 A What do you mean?</p> <p>18 THE INTERPRETER: You're asking if that's</p> <p>19 correct?</p> <p>20 MR. ABRAMS: Yeah, if that statement is</p> <p>21 correct.</p> <p>22 A Okay. Well, I don't know. I did not write this.</p> <p>23 Q (By Mr. Abrams) Okay. Let me -- I can take a step</p> <p>24 back.</p> <p>25 Ms. Guerrero, are you eligible to vote in Starr</p>
<p>7</p> <p>1 A Sixty years. Too much.</p> <p>2 Q And do you have any children?</p> <p>3 A Yes.</p> <p>4 Q How many children?</p> <p>5 A Four. Two males and two females. Yesterday was</p> <p>6 five months that one of my daughters passed away.</p> <p>7 Q I'm very sorry -- sorry for that.</p> <p>8 A Thank you.</p> <p>9 Q Ms. Guerrero, what -- what claim -- well, I mean --</p> <p>10 let me back up.</p> <p>11 Are you the plaintiff in a lawsuit brought against</p> <p>12 the Secretary of State and various officials for the early</p> <p>13 ballot -- ballot written board?</p> <p>14 A Yes.</p> <p>15 Q And what claims are you bringing in this lawsuit?</p> <p>16 A Because they are saying that that is not the</p> <p>17 signature for that vote, but that is the signature.</p> <p>18 (M. Guerrero Exhibit No. 1 was marked.)</p> <p>19 Q (By Mr. Abrams) I've handed you what we'll mark as</p> <p>20 Exhibit 1 of your deposition which -- oh -- which I'll</p> <p>21 represent to you is a Declaration that you have given in</p> <p>22 this case.</p> <p>23 Can you please review the Declaration and verify</p> <p>24 that this is your signature on the bottom?</p> <p>25 A Oh, yes, this is me. Like I was telling Mrs. -- to</p>	<p>9</p> <p>1 County?</p> <p>2 A Yes.</p> <p>3 Q And are you registered to vote in Starr County?</p> <p>4 A Yes.</p> <p>5 Q And do you ever vote in person?</p> <p>6 A Yes. At the beginning.</p> <p>7 Q And do you ever vote by mail?</p> <p>8 A Yes. Several times.</p> <p>9 Q In the March 2018 primary elections, did you vote</p> <p>10 by mail or submit -- did you submit an application to vote</p> <p>11 by mail?</p> <p>12 A My, gosh, I don't remember that well, but I think</p> <p>13 so. It's been, like, two or three years that I've been</p> <p>14 voting by mail.</p> <p>15 Q Turn to the next page of this document.</p> <p>16 Do you recognize this document?</p> <p>17 THE INTERPRETER: This one.</p> <p>18 A This one right here (indicating)?</p> <p>19 Q (By Mr. Abrams) Yes.</p> <p>20 A Okay. I see my signature here, too.</p> <p>21 Q If you look at Box 10 -- yeah, it's at the bottom</p> <p>22 there.</p> <p>23 A This one right here.</p> <p>24 Q Is that your signature?</p> <p>25 A And this is my phone number.</p>

<p style="text-align: right;">10</p> <p>1 Q And do you see where you've signed your name in Box 2 10?</p> <p>3 A Right here?</p> <p>4 Q Yes.</p> <p>5 A Yes.</p> <p>6 Q Is that your signature?</p> <p>7 A Yes.</p> <p>8 Q And I notice that you didn't -- your last name 9 doesn't have your full -- it doesn't state your full name. 10 Is there a reason for that?</p> <p>11 A Guerrero, yes, it's there. Guerrero.</p> <p>12 Q If you go back to the first page of your 13 Declaration, it says that you -- it says that you left out 14 some letters of your last name because you did not want to 15 write over the word "date."</p> <p>16 A Oh, yes. Yes.</p> <p>17 Q So if you look back on the next page, on Page 2.</p> <p>18 A This one? Yeah, because I didn't want to write 19 over this; so, that's why I wrote it like this.</p> <p>20 Q So you did leave off a few letters of your last 21 name in your signature?</p> <p>22 MS. VELA: Objection, form.</p> <p>23 A Just an R. That's it, or is it --</p> <p>24 Q (By Mr. Abrams) And if you turn to the last page 25 of the exhibit, do you recognize this document?</p>	<p style="text-align: right;">12</p> <p>1 Q I'm not trying to ask any conversations you had 2 with the attorney, but can you tell me who the attorney was?</p> <p>3 A Well, he gave me his name but I forgot.</p> <p>4 Q Was his name maybe Jared Najvar?</p> <p>5 A I can't remember.</p> <p>6 (M. Guerrero Exhibit No. 2 was marked.)</p> <p>7 Q (By Mr. Abrams) I want to show you what we'll mark 8 as Exhibit 2. And I'll represent that this is a Notice of 9 Rejected Ballot from the Early Voting Ballot Board. 10 Do you recognize this document?</p> <p>11 A I don't remember -- remember about this one. 12 March 6th? I don't think this is my writing here because it 13 doesn't even have the R here.</p> <p>14 Q And I'll tell you, this is a notification to you 15 that your ballot had been rejected.</p> <p>16 A Oh.</p> <p>17 Q Do you recall receiving this document?</p> <p>18 A No.</p> <p>19 Q So how do you recall learning when -- how do you 20 recall learning that your ballot in the March 2018 primary 21 was rejected?</p> <p>22 A Because the attorney came here. It was an attorney 23 and another lady.</p> <p>24 Q And do you recall who the other woman was?</p> <p>25 A No, I didn't -- I did not know her.</p>
<p style="text-align: right;">11</p> <p>1 A Yes, because this is my signature.</p> <p>2 Q Do you recognize this as a ballot envelope?</p> <p>3 A Yes. It can -- and this three.</p> <p>4 Q And you signed the ballot envelope with your 5 signature on the -- in the middle of the page there?</p> <p>6 A Where?</p> <p>7 Q At the top of the page?</p> <p>8 A Right here? Yes, this is my signature right here, 9 and this one over here (indicating).</p> <p>10 Q Do you recall after submitting or -- do you recall 11 after signing your ballot application and signing the 12 envelope and you put the envelope in the mail or gave it to 13 another individual to put in the mail -- what -- what did 14 you do with the envelope once you signed it?</p> <p>15 A We put it in the mail. Well, now I don't remember 16 if we put it in the mail or we gave it to the girl; but it 17 was already packed or closed.</p> <p>18 Q Okay. And when you say, "gave it to the girl," who 19 is that?</p> <p>20 A I do know her, but I don't remember her name. It's 21 just when they come here, just for this purpose.</p> <p>22 Q Do you recall receiving a notification that your 23 ballot had been rejected?</p> <p>24 A Yes. Well, that was when the attorney came here, 25 and the other girl.</p>	<p style="text-align: right;">13</p> <p>1 Q Did you reach out to the woman and the attorney 2 first, or did they reach out to you?</p> <p>3 A No. They -- they came over.</p> <p>4 Q Did you -- were you expecting them when they came 5 over?</p> <p>6 MS. VELA: Objection, form.</p> <p>7 A No. They suddenly showed up.</p> <p>8 Q (By Mr. Abrams) Do you recall when this was?</p> <p>9 A No, I don't have the date. They were here, but I 10 don't know when.</p> <p>11 Q Would you be able to say if it was about a couple 12 of months ago?</p> <p>13 A No. More than that.</p> <p>14 Q Has it been a year since then?</p> <p>15 A No, not that much; but more than the two months.</p> <p>16 Q So sometime between two months and a year ago you 17 received this visit?</p> <p>18 A Yes. They were here.</p> <p>19 Q And are you -- is it your testimony that at that 20 time you learned that your March 2018 ballot had been 21 rejected?</p> <p>22 MS. VELA: Objection, leading.</p> <p>23 A Yes.</p> <p>24 Q (By Mr. Abrams) And what did you do after that 25 meeting?</p>

<p style="text-align: right;">14</p> <p>1 A Well, nothing.</p> <p>2 Q So after learning that your ballot had been</p> <p>3 rejected, did you reach out to anyone in the Starr County</p> <p>4 clerk's office?</p> <p>5 A No.</p> <p>6 Q Did you reach out --</p> <p>7 A No. I mean, I don't have -- you don't have any</p> <p>8 knowledge of none of it.</p> <p>9 Q Did you reach out -- after you learned that your</p> <p>10 ballot had been rejected, did you reach out to or speak with</p> <p>11 anyone in the Texas Secretary of State's office?</p> <p>12 A No.</p> <p>13 Q Did you -- other than the attorney and the woman</p> <p>14 who was at this meeting, did you speak with anyone about</p> <p>15 your ballot being rejected?</p> <p>16 A No.</p> <p>17 Q Ms. Guerrero, do you intend to vote in future</p> <p>18 elections?</p> <p>19 A Yes.</p> <p>20 Q Do you intend to vote by mail or to go in person?</p> <p>21 A Maybe I'll go in person. I don't want these</p> <p>22 problems anymore.</p> <p>23 Q So just to make sure I understand, it's your</p> <p>24 testimony that in the future you may go and vote in person</p> <p>25 instead of by mail?</p>	<p style="text-align: right;">16</p> <p>1 Q This is the application to receive a mail-in</p> <p>2 ballot. Is that -- is that what you understand?</p> <p>3 A Yes.</p> <p>4 Q And do you remember when Ms. Vela and -- was</p> <p>5 Ms. -- let me back up.</p> <p>6 Was Ms. Vela with more than one person?</p> <p>7 A No. It was two.</p> <p>8 Q Do you remember when they came to your house?</p> <p>9 A No, I don't remember which date when they -- they</p> <p>10 came.</p> <p>11 Q Okay. Did you know Ms. Vela?</p> <p>12 A I did not know her. I met her here.</p> <p>13 Q Okay. And do you remember the name of the -- of</p> <p>14 the woman that was with her?</p> <p>15 A No.</p> <p>16 Q Did -- did you already have the form at your house,</p> <p>17 or did they bring you the form?</p> <p>18 A They brought it to me, and they left it here.</p> <p>19 Q Okay. If you could, turn the page -- to the last</p> <p>20 page. And do you know a Barbara Barrios?</p> <p>21 A Oh, yes, I do know her, yes.</p> <p>22 Q And how do you know her?</p> <p>23 A I had met her here in the area before. She used to</p> <p>24 sell shoes.</p> <p>25 Q And do you remember if she came to your house?</p>
<p style="text-align: right;">15</p> <p>1 A Yes.</p> <p>2 Q Have you voted in any election since the March 2018</p> <p>3 primary?</p> <p>4 A No.</p> <p>5 MR. ABRAMS: Uno momento. Give me a minute.</p> <p>6 I speak a little Spanish.</p> <p>7 Q (By Mr. Abrams) Ms. Guerrero, have you understood</p> <p>8 the questions that I've asked you today?</p> <p>9 A Yes.</p> <p>10 Q And have I been courteous with you today?</p> <p>11 A Very courteous.</p> <p>12 MR. ABRAMS: Okay. We will pass the witness.</p> <p>13 MR. GARZA: And I just have a couple of</p> <p>14 questions -- follow-up questions.</p> <p>15 EXAMINATION</p> <p>16 BY MR. GARZA:</p> <p>17 Q First, if you could take a look again at the second</p> <p>18 page of the first exhibit that you were shown.</p> <p>19 A This one?</p> <p>20 Q There, on the bottom of the page, it says -- that</p> <p>21 is the name Modesta Vela.</p> <p>22 Do you know who Modesta Vela is?</p> <p>23 A That was -- that was one of the people that showed</p> <p>24 up here. They came here. This was when they brought the --</p> <p>25 the envelope.</p>	<p style="text-align: right;">17</p> <p>1 A Yes, she was here before. I never went to her</p> <p>2 house.</p> <p>3 Q And did you see her sign this form?</p> <p>4 A This one here? Yes.</p> <p>5 Q Okay. And did you give her -- was she here by</p> <p>6 herself, or did she come with other people?</p> <p>7 A With the other lady -- with that lady.</p> <p>8 Q So she came with Ms. Vela?</p> <p>9 A (Witness nods head.)</p> <p>10 Q They both came --</p> <p>11 MR. GARZA: So -- I'm sorry. If she could</p> <p>12 answer the question.</p> <p>13 A Yes.</p> <p>14 Q (By Mr. Garza) And so was the same two ladies that</p> <p>15 came -- that brought you the application that came when they</p> <p>16 picked up your ballot?</p> <p>17 A Yes.</p> <p>18 Q And did -- when you -- when you signed the</p> <p>19 application, did they take the application with them?</p> <p>20 MS. VELA: Objection, form.</p> <p>21 THE INTERPRETER: When they signed?</p> <p>22 MR. GARZA: When she signed.</p> <p>23 A Yes, they took it, but it was already -- the</p> <p>24 envelope was already closed.</p> <p>25 Q (By Ms. Garza) Did you put the stamp on the</p>

18	<p>1 application? We're talking about the application first.</p> <p>2 A You mean on the envelope?</p> <p>3 Q Yes.</p> <p>4 A No.</p> <p>5 Q And on the -- on the -- on the third page, where</p> <p>6 you signed for the ballot -- or where you voted, did you</p> <p>7 seal the envelope after you voted?</p> <p>8 A Yes.</p> <p>9 Q And did you put the stamp on the -- on the ballot</p> <p>10 envelope?</p> <p>11 A I didn't have any.</p> <p>12 Q And so did Ms. Barrios and Ms. Vela, did they take</p> <p>13 your ballot with them?</p> <p>14 A Yes.</p> <p>15 Q Did they witness how you voted?</p> <p>16 A No.</p> <p>17 Q Did -- when they came to pick up your ballot, did</p> <p>18 you already have your ballot, or did they bring you a</p> <p>19 ballot?</p> <p>20 A No. They brought it to me.</p> <p>21 Q Do you know how they got your ballot?</p> <p>22 MS. VELA: Objection, form.</p> <p>23 A No. They've always been involved working with</p> <p>24 ballots -- votes.</p> <p>25 Q (By Mr. Garza) So these two ladies have helped you</p>	20	<p>1 FURTHER EXAMINATION</p> <p>2 BY MR. GARZA:</p> <p>3 Q And I'm sorry to ask. How old are you?</p> <p>4 A I'm going to be turning 80.</p> <p>5 MR. GARZA: All right. Thank you.</p> <p>6 MR. ABRAMS: I have no further questions.</p> <p>7 (Deposition concluded)</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
19	<p>1 vote before?</p> <p>2 A Yes. The previous years, yes.</p> <p>3 Q And do you know if they had other ballots with them</p> <p>4 when they came to your house?</p> <p>5 A No. I didn't notice that.</p> <p>6 Q You didn't see them carrying other ballots with</p> <p>7 them?</p> <p>8 A No.</p> <p>9 Q And when they brought the application for you, did</p> <p>10 you notice whether they had other applications with them?</p> <p>11 A No.</p> <p>12 MR. GARZA: I don't have any other questions.</p> <p>13 MS. VELA: I just have a few questions.</p> <p>14 EXAMINATION</p> <p>15 BY MS. VELA:</p> <p>16 Q Ms. Guerrero, would you vote by mail again if you</p> <p>17 knew that your vote would be counted?</p> <p>18 A No. I'm going to go in person.</p> <p>19 Q And did the fact that your vote was rejected</p> <p>20 influence your decision?</p> <p>21 A Yes, because it was -- the signature was real. It</p> <p>22 was not false -- not a false signature or forged signature.</p> <p>23 MS. VELA: Thank you. That's all I have.</p> <p>24 MR. GARZA: I have one more question.</p> <p>25</p>	21	<p>1 CHANGES AND SIGNATURE</p> <p>2 WITNESS NAME: _____ DATE OF DEPOSITION: _____</p> <p>3 PAGE LINE CHANGE REASON</p> <p>4 _____</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p>

<p>22</p> <p>1 I, MARIA GUERRERO, have read the foregoing deposition</p> <p>2 and hereby fix my signature that same is true and correct,</p> <p>3 except as noted above.</p> <p>4</p> <p>5 _____</p> <p>6 MARIA GUERRERO</p> <p>7 STATE OF _____)</p> <p>8 COUNTY OF _____)</p> <p>9 Before me, _____, on this day personally</p> <p>10 appeared MARIA GUERRERO, known to me (or proved to me under</p> <p>11 oath or through _____) to be the person whose name</p> <p>12 is subscribed to the foregoing instrument and acknowledged</p> <p>13 to me that they executed the same for the purposes and</p> <p>14 consideration therein expressed.</p> <p>15 Given under my hand and seal of office this _____</p> <p>16 day of _____, _____.</p> <p>17</p> <p>18</p> <p>19</p> <p>20 NOTARY PUBLIC IN AND FOR</p> <p>21 THE STATE OF _____</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>24</p> <p>1 _____ was not requested by the deponent or a party before</p> <p>2 the completion of the deposition.</p> <p>3 I further certify that I am neither counsel for, related</p> <p>4 to, nor employed by any of the parties to the action in</p> <p>5 which this proceeding was taken, and further that I am not</p> <p>6 financially or otherwise interested in the outcome of the</p> <p>7 action.</p> <p>8 Subscribed and sworn to on this the 29th day of</p> <p>9 July, 2019</p> <p>10</p> <p>11 _____</p> <p>12 Toi K. Dowell, CSR No. 2768</p> <p>13 Certified Expires 12/31/2019</p> <p>14 Integrity Legal Support Solutions</p> <p>15 Firm Registration No. 528</p> <p>16 PO Box 245</p> <p>17 Manchaca, TX 78652</p> <p>18 (512)320-8690</p> <p>19 (512)320-8692 (fax)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>23</p> <p>1 UNITED STATES DISTRICT COURT</p> <p>2 SOUTHERN DISTRICT OF TEXAS</p> <p>3 MCALLEN DIVISION</p> <p>4 FEDERICO FLORES, JR., §</p> <p>MARIA GUERRERO, and §</p> <p>4 VICENTE GUERRERO, §</p> <p>Plaintiffs, §</p> <p>5 §</p> <p>§ CIVIL ACTION NO.7:18-cv-113</p> <p>6 §</p> <p>v. §</p> <p>7 §</p> <p>TEXAS SECRETARY OF STATE and §</p> <p>8 ARMANDINA MARTINEZ, ALMA §</p> <p>GARCIA, ALICIA DOUGHERTY NO. §</p> <p>9 1, ALICIA DOUGHERTY NO. 2, §</p> <p>YOLANDA MARTINEZ, §</p> <p>10 Defendants. §</p> <p>11</p> <p>REPORTER'S CERTIFICATE</p> <p>12 ORAL DEPOSITION OF MARIA GUERRERO</p> <p>JULY 25, 2019</p> <p>13</p> <p>14 I, Toi K. Dowell, certified shorthand reporter in and</p> <p>15 for the State of Texas, hereby certify to the following:</p> <p>16 That the witness MARIA GUERRERO was duly sworn by the</p> <p>17 officer and that the transcript of the deposition is a true</p> <p>18 record of the testimony given by the witness;</p> <p>19 I further certify that pursuant to the FRCP Rule</p> <p>20 30(f)(1) that the signature of the Deponent</p> <p>21 x was requested by the deponent or a party before the</p> <p>22 completion of the deposition and returned within 30 days</p> <p>23 from date of receipt of the transcript. If returned, the</p> <p>24 attached Changes and Signature Page contains any changes and</p> <p>25 the reasons therefore;</p>	

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

LETICIA GARZA GALVAN,
ET AL

VS.

DAVID WHITLEY, in his
Official Capacity as
Texas Secretary of State,
et al

Case No. 7:18-cv-113

ORAL DEPOSITION OF

FEDERICO FLORES, JR.

MAY 13, 2019

ORAL DEPOSITION OF FEDERICO FLORES, JR., produced
as a witness at the instance of the Defendant David
Whitley, and duly sworn, was taken in the above-styled
and numbered cause on the 13th day of May, 2019, from
2:09 p.m. to 3:24 p.m., before Tracie L. Carbajal, CSR
in and for the State of Texas, reported by machine
shorthand, at the residence of Federico Flores, Jr.,
located at 255 East Palmas Street, La Grulla, Texas,
pursuant to the Federal Rules of Civil Procedure and the
provisions attached hereto.

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<p>6</p> <p>1 translator for all of your answers so that everything</p> <p>2 you say should be in Spanish and everything I say will</p> <p>3 be in English?</p> <p>4 A. Okay. Yes.</p> <p>5 Q. This is -- even though I speak a little bit of</p> <p>6 Spanish myself, but I'm not good enough to ask the</p> <p>7 questions to you in Spanish.</p> <p>8 Mr. Flores, what did you do to prepare for</p> <p>9 today's deposition?</p> <p>10 A. Well, nothing. I haven't done anything. Just</p> <p>11 waiting.</p> <p>12 Q. Did you review any documents?</p> <p>13 A. No.</p> <p>14 Q. Okay. Mr. Flores, I just want to go through a</p> <p>15 little bit of background about your life, and then we</p> <p>16 can kind of get to the specific issues in this case.</p> <p>17 Mr. Flores, how long have you lived in La Grulla?</p> <p>18 A. Well, we can say all of my life; since I was a</p> <p>19 little boy. I mean, we used to live with an aunt. We</p> <p>20 didn't have a house, but then I got married, so I've</p> <p>21 always lived here.</p> <p>22 Q. So you've lived here, is it fair to say, most of</p> <p>23 your adult life?</p> <p>24 A. Yes.</p> <p>25 Q. And are you currently employed?</p>	<p>8</p> <p>1 elections.</p> <p>2 Q. For how long, approximately, do you know -- let</p> <p>3 me start that over. For how long, about, have you been</p> <p>4 voting in Starr County?</p> <p>5 A. Well, I've been voting for a long time. I can</p> <p>6 say that maybe I've been voting since I've lived here.</p> <p>7 I voted when I was single and after being married.</p> <p>8 Q. Would it be fair to say you've been voting for</p> <p>9 more than ten years?</p> <p>10 A. More than that, yes.</p> <p>11 Q. Maybe more than 20?</p> <p>12 A. Yes. I'm almost 100 years old. I'm going to be</p> <p>13 80.</p> <p>14 Q. Uh-huh. Mr. Flores, I don't want to ask you</p> <p>15 anything that involved a specific conversation with your</p> <p>16 attorney, but I do just want to understand how you came</p> <p>17 to know about this lawsuit. Could you just tell me a</p> <p>18 little bit about how you came to be aware of this</p> <p>19 litigation?</p> <p>20 A. Well, Amalia is the one that brought me that</p> <p>21 paper so I could vote, but then I had the stroke so I</p> <p>22 couldn't sign the way I used to, so that's why they</p> <p>23 thought that this is not my signature. That led to all</p> <p>24 of this. That's why we're here. As a matter of fact, I</p> <p>25 have numbness in my hands. Right now I can move them a</p>
<p>7</p> <p>1 A. No.</p> <p>2 Q. Okay. What was your career or occupation?</p> <p>3 A. Well, I worked out in the fields, but I also had</p> <p>4 this career or profession in TV and radio repairs. I</p> <p>5 did that work in Rio Grande City.</p> <p>6 Q. And you mentioned that you were married?</p> <p>7 A. Well, I haven't mentioned it, but, yeah, I was</p> <p>8 married, but she passed away. My wife passed away.</p> <p>9 Q. And do you have any children?</p> <p>10 A. Yes.</p> <p>11 Q. How many?</p> <p>12 A. Well, now there are five. It used to be six.</p> <p>13 Q. Do any of them live in La Grulla?</p> <p>14 A. Well, all of them live outside the state. Only</p> <p>15 one of them -- one of my daughters, who's a teacher,</p> <p>16 lives on the other side of Expressway 83 in La Victoria.</p> <p>17 Q. Mr. Flores, do you recall when you first</p> <p>18 registered to vote?</p> <p>19 A. No.</p> <p>20 Q. Are you currently registered to vote?</p> <p>21 A. Yes.</p> <p>22 Q. What was the last election that you recall voting</p> <p>23 in?</p> <p>24 A. Well, exactly, I don't know which ones. I mean,</p> <p>25 I don't want to lie, and we haven't had any recent</p>	<p>9</p> <p>1 little bit, but I can't sign like I used to before.</p> <p>2 Q. You mentioned Amalia. What is Amalia's last</p> <p>3 name?</p> <p>4 A. Her last is Gonzalez through her husband's last</p> <p>5 name.</p> <p>6 Q. And is she a friend?</p> <p>7 A. Well, concuna. It means that I married her</p> <p>8 husband's sister.</p> <p>9 THE INTERPRETER: There's no direct</p> <p>10 translation for that word, concuna. I've looked it up,</p> <p>11 but that's what it means.</p> <p>12 BY MR. ABRAMS:</p> <p>13 Q. I want to -- you said a lot of information there,</p> <p>14 so I want to kind of unpack some of that. Which</p> <p>15 election were you referring to there?</p> <p>16 A. Well, I didn't pay attention. I mean, I've</p> <p>17 always voted. I vote here from the house all the time.</p> <p>18 They always bring me that form, but I don't remember</p> <p>19 which that one was.</p> <p>20 Q. So when you say you vote by the house in the</p> <p>21 home, do you mean that you vote by mail?</p> <p>22 A. Either that or that person that brings me the</p> <p>23 form that picks it up for me, and that person takes it.</p> <p>24 Q. But it's still a mail ballot, correct?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">10</p> <p>1 Q. How long have you been voting by mail?</p> <p>2 A. Well, I mean, I've done it for a long time. It's</p> <p>3 been several times, but I don't remember exactly a</p> <p>4 number. Right now, with the condition that I have in my</p> <p>5 legs, sometimes I get lazy so they just bring me the</p> <p>6 form here to the house because I have to -- if not, I</p> <p>7 have to be with the walker.</p> <p>8 Q. Do you know about how many times, if any, your</p> <p>9 ballot has been rejected when you voted by mail?</p> <p>10 A. No. Just this time, and that was because I got</p> <p>11 the stroke and I couldn't sign the way I used to sign</p> <p>12 before on previous occasions.</p> <p>13 Q. And when you say "this time," do you know if that</p> <p>14 would be the March 2018 Democratic Primary?</p> <p>15 A. Well, it was my last vote, my last participation</p> <p>16 because, then, we had all of this issue, and that's when</p> <p>17 they saw that my signature was not the same. It wasn't</p> <p>18 familiar. It was not the same as my previous</p> <p>19 signatures, and that's because I had the stroke and I</p> <p>20 had a condition in my hands.</p> <p>21 (Exhibit No. 2 marked.)</p> <p>22 BY MR. ABRAMS:</p> <p>23 Q. I would like to show you what we'll mark as</p> <p>24 Exhibit 2. Just take a moment and look it over, please.</p> <p>25 A. Is this the one where I voted, because I see my</p>	<p style="text-align: right;">12</p> <p>1 Q. And in the fourth box, where it asks for your</p> <p>2 date of birth, is that your birth date, October 3rd,</p> <p>3 1939?</p> <p>4 A. Yes; yes.</p> <p>5 Q. Okay. And it says -- in box five, you checked</p> <p>6 that the reason for voting by mail is that you are 65</p> <p>7 years or older, correct?</p> <p>8 A. Well, yes. I mean, I'm older, but for sure, yes.</p> <p>9 Q. And let's skip to box ten. And it says --</p> <p>10 there's a signature line that says, "I certify that the</p> <p>11 information given in this application is true, and I</p> <p>12 understand that giving false information in this</p> <p>13 application is a crime," and then there's your -- it</p> <p>14 looks like someone has signed it, correct?</p> <p>15 A. Yes, this is my signature right here.</p> <p>16 Q. And it's dated, as well, correct?</p> <p>17 A. Well, 12-28-17.</p> <p>18 Q. Okay. Did you sign this application?</p> <p>19 A. Yes, and that's when I had my issue with my</p> <p>20 hands, and it may look a little bit different. I mean,</p> <p>21 there's not really too much difference, just a little</p> <p>22 bit off.</p> <p>23 Q. The medical issues you were having with your</p> <p>24 hand, how long has that been going on?</p> <p>25 A. Well, first -- ever since I had the first</p>
<p style="text-align: right;">11</p> <p>1 signature here?</p> <p>2 Q. Well, let me ask you, can you please look at it</p> <p>3 and see if you recognize what -- this is a copy of a</p> <p>4 document, but could you see if you recognize what this</p> <p>5 document is?</p> <p>6 A. Yes; yes. I mean, my signature is right there.</p> <p>7 I would have signed it. I must have signed it. It's</p> <p>8 fine. It's my signature.</p> <p>9 (Exhibit No. 3 marked.)</p> <p>10 BY MR. ABRAMS:</p> <p>11 Q. Mr. Flores, is the first page of this document</p> <p>12 your Application to Vote by Ballot -- Ballot by Mail in</p> <p>13 the -- in the Democratic Primary Election?</p> <p>14 A. Well, I think so, because I used to get them by</p> <p>15 mail, and then that person brought me the other form,</p> <p>16 and I told him that I already had it. Then I filled it</p> <p>17 out, and we put it back in the mail.</p> <p>18 Q. Okay. So if you look at -- let's just go through</p> <p>19 the application. If you look at the first box, is that</p> <p>20 your name there, Federico Flores, Jr.?</p> <p>21 A. Yes; yes.</p> <p>22 Q. And the second box, where it lists -- asks for</p> <p>23 your residence, is that your residence, 255 East Palmas</p> <p>24 Street?</p> <p>25 A. Yes; yes.</p>	<p style="text-align: right;">13</p> <p>1 stroke -- the first stroke. I don't have an exact date.</p> <p>2 I didn't really pay attention to that, but ever since I</p> <p>3 had that, I've had problems with my hands, my knees, and</p> <p>4 now I need to depend on the walker. I didn't use to</p> <p>5 depend on the walker before.</p> <p>6 Q. Was your first stroke before 2017?</p> <p>7 A. I believe so. It's been a long time already</p> <p>8 because I'm just here at the house. This is where I</p> <p>9 spend -- this is my space. I mean, I don't really --</p> <p>10 unless I have to go to a doctor. I have to wait for</p> <p>11 somebody -- a ride, and somebody assists me because the</p> <p>12 tall (sic) is somewhat high, and I've already fallen</p> <p>13 several times, so somebody has to help me.</p> <p>14 Q. In box 11 on this document, you list a witness of</p> <p>15 Andres Jesus De Leon; is that correct?</p> <p>16 A. Well, I did not list him.</p> <p>17 Q. Okay. Was Mr. De Leon in the room or next to you</p> <p>18 when you were signing your application?</p> <p>19 A. No. I signed here in the house.</p> <p>20 Q. So just to clarify, Mr. De Leon did not sign your</p> <p>21 application?</p> <p>22 A. Not when I signed, no, I mean, because I signed</p> <p>23 here. This is my signature right here, but over here, I</p> <p>24 mean, I don't know.</p> <p>25 Q. If you could turn to the second page.</p>

<p>14</p> <p>1 A. (Witness complies.)</p> <p>2 Q. And I'll represent to you that this is a document</p> <p>3 received from your attorney of the -- it's a printout of</p> <p>4 the carrier envelope that accompanied your application,</p> <p>5 the ballot -- that accompanied the ballot. I apologize.</p> <p>6 Do you recognize your signature on this document?</p> <p>7 A. Yes.</p> <p>8 Q. Do you know if you signed this document, the</p> <p>9 carrier envelope?</p> <p>10 A. Yes.</p> <p>11 Q. And this was for the Primary Election, right?</p> <p>12 A. Uh-huh.</p> <p>13 Q. Is that a yes?</p> <p>14 A. Yes.</p> <p>15 Q. Mr. Flores, how were you notified that your</p> <p>16 ballot in the March 2018 Democratic Primary was being</p> <p>17 rejected?</p> <p>18 A. Well, this person, Amalia, she brought me this</p> <p>19 and said that it had been rejected because of my</p> <p>20 signature. Not only mine. Several forms -- ballots had</p> <p>21 been rejected, and, I mean, that they were going to look</p> <p>22 into this and check. I mean, I agree because, I mean, I</p> <p>23 wasn't signing the same way due to the condition on my</p> <p>24 hands.</p> <p>25 Q. So would you say that there's a difference in</p>	<p>16</p> <p>1 Q. Do you let Amalia Gonzalez check your mail?</p> <p>2 A. No, I don't. I'm the only one who has the key to</p> <p>3 my mail.</p> <p>4 Q. Okay. So how did Amalia Gonzalez receive the</p> <p>5 Notice of Rejected Ballot?</p> <p>6 A. Well, because, like I said, she likes to be</p> <p>7 involved in elections and taking people -- take people</p> <p>8 to vote from here and there, and -- if people don't have</p> <p>9 a car, they'll bring them back, or they'll bring you the</p> <p>10 ballot, the form so you can fill it out and -- but</p> <p>11 she's -- then she's the one that said that the signature</p> <p>12 was rejected. I told her, "Well, yeah it may be</p> <p>13 different because of the numbness to my hands."</p> <p>14 Q. Does -- do you know whether Ms. Gonzalez works</p> <p>15 for Starr County?</p> <p>16 A. No; no. I don't think so, no.</p> <p>17 Q. What does Ms. Gonzalez do; do you know?</p> <p>18 THE INTERPRETER: Let me clarify one thing.</p> <p>19 A. No. She's -- I think she's already receiving her</p> <p>20 retirement benefits -- payments, and she just spends her</p> <p>21 time going to the daycare centers for adults.</p> <p>22 Q. Mr. Flores, after you learned that your ballot</p> <p>23 was rejected, did you do anything in response to that?</p> <p>24 A. No, because I never received anything back. For</p> <p>25 example, this ballot right here, I just saw it -- I just</p>
<p>15</p> <p>1 your signature between the application and the carrier</p> <p>2 envelope?</p> <p>3 A. Well, I mean, for example, here on the F -- the</p> <p>4 F, I mean, I try to -- it could be that the F -- I</p> <p>5 slipped there, but, I mean, I try to sign the same way</p> <p>6 all the time, but I know that's my handwriting.</p> <p>7 Q. I want to show you what we'll mark as Exhibit 3,</p> <p>8 and this is a Notice of Rejected Ballot that states that</p> <p>9 your ballot in the Primary has been rejected; is that</p> <p>10 correct? Do you recognize this document as saying that?</p> <p>11 A. Yes; yes.</p> <p>12 Q. Do you recall receiving this document?</p> <p>13 A. Well, the lady that brings me the form to cast my</p> <p>14 vote, she lives right here. She's the one that told me</p> <p>15 that my signature was not the same, that they were going</p> <p>16 to reject it. Not only mine. Several were rejected,</p> <p>17 and I told her, "Well, it could be because I didn't -- I</p> <p>18 couldn't sign the same way because of numbness in my</p> <p>19 hands."</p> <p>20 Q. Was -- is that -- is that person Amalia Gonzalez?</p> <p>21 A. Yes. She likes -- I mean, she likes politics.</p> <p>22 She's involved in politics, and she -- I mean, if she</p> <p>23 supports -- she's the kind of a person if she supports a</p> <p>24 candidate, then they'll come and they'll take you to</p> <p>25 vote and bring you back.</p>	<p>17</p> <p>1 saw it right now, but I never got anything back saying</p> <p>2 it was rejected. Now, here it does say that it was</p> <p>3 rejected, but I never saw anything.</p> <p>4 Q. But you knew that your ballot was rejected</p> <p>5 because Amalia Gonzalez told you, correct?</p> <p>6 A. Well, they said the issue was the signature, that</p> <p>7 it was different, that they were going to check that.</p> <p>8 And I told them, "Well, yeah, it could be because, I</p> <p>9 mean -- because of the issue with my hands." I mean,</p> <p>10 I'm not saying that I have pretty handwriting.</p> <p>11 Sometimes I struggle with the letters.</p> <p>12 Q. So -- and I just want to make sure I understand.</p> <p>13 Once you learned that your ballot had been rejected, did</p> <p>14 you talk to anyone in Starr County about the issue that</p> <p>15 your ballot was rejected?</p> <p>16 A. No. I don't leave the house. I'm just here.</p> <p>17 Q. Did you speak with anyone on the Early Voting</p> <p>18 Ballot Board?</p> <p>19 A. No.</p> <p>20 Q. Did you talk with anyone in John Rodriguez'</p> <p>21 office in Starr County?</p> <p>22 A. No.</p> <p>23 Q. And just to go back to something, do you ever</p> <p>24 recall receiving Exhibit 3, the Notice of Rejected</p> <p>25 Ballot?</p>

18	1 A. No; no. I have not received it, no. 2 Q. But you did learn that your ballot had been 3 rejected? 4 A. Well, we were just told that it was going to come 5 back because the signature was not the same like I used 6 to sign before, but I'm barely looking at it right now. 7 Q. And when you say, "We were told," who told you? 8 A. Amalia was the one that came and told me that 9 they did not accept my signature, and I told her it 10 could be -- it could be a little bit different because 11 ever since I had the stroke, I don't write the same. I 12 mean, it's been a long time already, and I still have 13 numbness in my hands. I used to drop everything out of 14 my hands. At least now I can grab something or if -- 15 pay more attention. That way, I can -- I won't drop the 16 fork or the spoon or anything. 17 Q. And have you voted in any elections since your 18 ballot was rejected? 19 A. No; no. 20 Q. Do you intend to vote in future elections? 21 A. Well, I mean, I do have my registration card, my 22 ID where I can show it and present it, and I can vote. 23 If I like that candidate, then I'll vote. If not, they 24 don't let me vote, then that's okay, but, I mean, I have 25 the right to vote. I'm a U.S. citizen. I've never been	20	1 (Recess from 2:53 p.m. to 2:59 p.m.) 2 BY MR. ABRAMS: 3 Q. Just a few quick clarification questions. You 4 were registered to vote at the time of the March 2018 5 Primary, correct? 6 A. Yes. 7 Q. After you learned that your ballot was rejected, 8 did you attempt to speak with an attorney about the fact 9 that your ballot was rejected? 10 A. No; no. 11 Q. Hold on one second. 12 MR. ABRAMS: Will pass the witness. 13 EXAMINATION 14 BY MR. NAJVAR: 15 Q. Okay. Mr. Flores, I'm just going to have a few 16 quick questions of my own. You -- you said earlier that 17 if there's a candidate that you like in another election 18 in the future, that you would like to vote; is that 19 correct? 20 A. Yes. 21 Q. Will you vote by mail again? 22 A. Well, I'm going to try to go in person this time. 23 This way, I avoid more issues like this, more problems. 24 That way they accept -- they accept me. Then I'll be 25 taking my card to vote.
19	1 rejected for that, not been allowed to vote. I've 2 always voted. I've always shown my ID. 3 Q. Let me just try to ask that again just to 4 clarify. In the future, if there's another election in 5 Starr County, would you like to -- do you intend to 6 participate in a future election if there's one in Starr 7 County? 8 A. Yes. I'll just show them my registration card, 9 and, I mean, if they take it, that's fine. If not -- 10 and if not, then, I mean, I will ask them, "Why? How 11 come you're not letting me vote," if they reject me. I 12 mean, they should let me vote. If not, I'll just go 13 back to Mexico like La India Maria. 14 Q. Have you had any communications with the Texas 15 Secretary of State's Office? 16 A. No. 17 Q. Have you had any communications with the Early 18 Voting Ballot Board? 19 A. No. 20 Q. This might be a shorter deposition than a lot of 21 them. If you wouldn't mind giving me five or ten 22 minutes to look over my questions and then we'll 23 probably be done pretty soon. 24 A. Take your time. That's fine. No rush. 25 MR. ABRAMS: We'll go off the record.	21	1 Q. Okay. Well, if -- is that more difficult for you 2 to go in person? 3 A. Well, yes, I mean, but I'll make an exception. I 4 mean, they -- they'll come and pick me up by car and 5 take me to the voting ballots, and I'll vote there. 6 Then they'll bring me back. That's the way they do it 7 when they take me to the doctor. They pick me up; they 8 assist me. 9 Q. Well, let me ask you this, Mr. Flores. If there 10 were a better process for voting by mail where you could 11 confirm that it was your ballot, would you -- would you 12 still like to vote by mail? 13 MR. ABRAMS: Objection; form. You can still 14 answer. 15 A. Well, no, because, I mean -- I mean, even if it's 16 better, and if I vote again, and then I'm going to have 17 this problem again, this issue, so I'll just go in 18 person to the voting ballots over there. I'll just have 19 one of my sons take me and bring me back. 20 Q. Okay. Well, let me ask you this. Do you 21 think -- did anybody from the elections -- did any 22 election official call you to try to confirm whether 23 that was your signature on the carrier envelope? 24 A. No. 25 Q. Do you think that before the election officials

<p style="text-align: right;">22</p> <p>1 can reject your ballot by comparing the signatures if</p> <p>2 they think there's a difference, would you -- would you</p> <p>3 like for them to call you to confirm that you voted?</p> <p>4 A. Well, I say that they should have called to</p> <p>5 confirm, and that way I could have a chance to tell</p> <p>6 them. I mean, I don't see no difference here, and I</p> <p>7 was -- I already had my -- the condition on my hands.</p> <p>8 Q. Is it possible that at some point your health</p> <p>9 could be such that it would -- it would be impossible</p> <p>10 for you to go vote in person?</p> <p>11 A. Well, that could be, I mean, because, I mean, if</p> <p>12 I already had a stroke, I could get another one again.</p> <p>13 I have heart problems. I think they want to insert one</p> <p>14 of those little machines here in my heart, but they</p> <p>15 haven't approved it. If not, then I won't vote anymore.</p> <p>16 I mean, I don't think I have much -- too long to live</p> <p>17 anyway.</p> <p>18 Q. Well, let me -- Mr. Flores, so -- I'm going to</p> <p>19 ask you a hypothetical question, as if you could talk to</p> <p>20 the judge right now, okay? If the judge were sitting</p> <p>21 here at the table right now, the judge in McAllen, and</p> <p>22 he could tell you, "Mr. Flores, I'm going to change the</p> <p>23 law so that the election officials have to call you to</p> <p>24 ask you if you really signed your ballot before they</p> <p>25 throw it in the trash," would that give you more</p>	<p style="text-align: right;">24</p> <p>1 Q. Do you feel, Mr. Flores, like you have done</p> <p>2 something wrong?</p> <p>3 A. Well, no. I don't think so, no, because, I mean,</p> <p>4 I say that's my signature. It's almost the same. Maybe</p> <p>5 there's a slight difference in one of the letters, but I</p> <p>6 would say it's the same.</p> <p>7 Q. Okay. So what if one day in the future it's</p> <p>8 harder for you to walk or for whatever reason it's</p> <p>9 impossible for you to go to vote in person, will you</p> <p>10 just not vote at all at that time?</p> <p>11 MR. ABRAMS: Objection; form.</p> <p>12 A. Well, no. I mean, I have to find a way. I mean,</p> <p>13 I have my -- to participate in voting. I have my sons.</p> <p>14 I will just tell one of them to take me, and they'll</p> <p>15 help me get off the car over there. I have gone voting</p> <p>16 before to the school, to that small house that's there,</p> <p>17 but I'm not going to trust anyone again.</p> <p>18 Q. Okay. Just let me have a moment with my notes</p> <p>19 now.</p> <p>20 (Recess from 3:13 p.m. to 3:18 p.m.)</p> <p>21 BY MR. NAJVAR:</p> <p>22 Q. Okay. Mr. Flores, so if there were an election</p> <p>23 in the future and none of your family and nobody else</p> <p>24 could take you to vote in person, would you like to</p> <p>25 have -- would you consider -- would you vote by mail at</p>
<p style="text-align: right;">23</p> <p>1 confidence in voting by mail in the future?</p> <p>2 MR. ABRAMS: Objection; form.</p> <p>3 A. Well, honestly, no, because, I mean, I think this</p> <p>4 is too much. I mean, I don't see that much difference</p> <p>5 in my signature. I wish I had other paperwork where I</p> <p>6 had my signature that I could show you, and you could</p> <p>7 see -- would be able to see that there's not much</p> <p>8 difference in the way I sign.</p> <p>9 Q. Okay. So I want to make sure I understand</p> <p>10 because earlier you said that you've -- in recent</p> <p>11 elections, you have voted by mail; is that true?</p> <p>12 A. Well, yes, because, I mean, it's not that I'm</p> <p>13 lazy, but because of the condition with my legs, I</p> <p>14 wanted to take advantage that I could vote this way and</p> <p>15 avoid going in person. But I know now that next time I</p> <p>16 will just tell one of my sons to take me and help me</p> <p>17 through the voting process, help me there and then avoid</p> <p>18 all of these problems.</p> <p>19 Q. Okay. And when you say "all of these problems,"</p> <p>20 what do you mean?</p> <p>21 A. Well, I mean, all of this right here, I mean,</p> <p>22 these problems. That's what we're here for because of</p> <p>23 that signature. If it wasn't for that, I mean, there</p> <p>24 wouldn't be any problem. We would have resolved it</p> <p>25 already.</p>	<p style="text-align: right;">25</p> <p>1 that time?</p> <p>2 MR. ABRAMS: Objection; form.</p> <p>3 A. Well, yes, I mean, as long as that person is -- I</p> <p>4 mean, you trust that person who's going to take you; you</p> <p>5 know that person. Sometimes you don't know who comes to</p> <p>6 get you or who's going to bring you back.</p> <p>7 Q. Well, I'm asking you if there's nobody to take</p> <p>8 you to vote in person and -- would you like to vote by</p> <p>9 mail in that instance?</p> <p>10 A. Well, no, I wouldn't like to vote like that</p> <p>11 again. I mean, there's no reason why I wouldn't be able</p> <p>12 to go and vote like that. It's not that far, just to</p> <p>13 that small house that's there, unless you're ill, but</p> <p>14 I'm fine -- if I'm fine, I can go in the car. Maybe</p> <p>15 I'll buy a hamburger on the way back.</p> <p>16 Q. Okay. Mr. Flores, I see that you use a walker</p> <p>17 here in the house when you move around. How long have</p> <p>18 you used the walker?</p> <p>19 A. Well, it's been a while already. I mean, I have</p> <p>20 two of them. The other one doesn't have any wheels, but</p> <p>21 I need it because I may fall down. I've used it since I</p> <p>22 was left with this condition, and I'm afraid to fall</p> <p>23 down, and they're things that I need to ambulate</p> <p>24 because, also, the house is somewhat elevated.</p> <p>25 Q. Okay. And I think this is my last question, or</p>

<p style="text-align: right;">26</p> <p>1 last couple of questions, but you mentioned earlier that</p> <p>2 you can't trust somebody. Who were you talking about?</p> <p>3 A. No. I meant -- I mean, why do you need someone</p> <p>4 to come and invite you over to vote? I would just tell</p> <p>5 one of my sons to take me. I don't -- I don't need</p> <p>6 that, and it's just to that voting ballot. It's just</p> <p>7 small stations or houses. Whoever wants to go vote, you</p> <p>8 can go vote there.</p> <p>9 MR. NAJVAR: Okay. No further questions.</p> <p>10 EXAMINATION</p> <p>11 BY MR. ABRAMS:</p> <p>12 Q. Just really fast. You mentioned your sons.</p> <p>13 Where do your sons live?</p> <p>14 A. Well, just one of my daughters. She's a teacher.</p> <p>15 She lives on the other side in La Victoria. The rest</p> <p>16 live outside the state. One is in California; another</p> <p>17 one in Indiana; and the other one in Illinois. They</p> <p>18 only come here in December.</p> <p>19 MR. ABRAMS: No further questions.</p> <p>20 MR. NAJVAR: No further questions.</p> <p>21 (Proceedings concluded at 3:24 p.m.)</p> <p>22 (According to Federal Rule 30(e)(1),</p> <p>23 deponent or party must request to read and sign before</p> <p>24 the deposition is completed. Since this was not done,</p> <p>25 signature is considered waived for this transcript.)</p>	<p style="text-align: right;">28</p> <p>1 action in which this proceeding was taken, and further</p> <p>2 that I am not financially or otherwise interested in the</p> <p>3 outcome of the action.</p> <p>4 GIVEN UNDER MY HAND AND SEAL OF OFFICE, on this</p> <p>5 the 23rd day of May, 2019.</p> <p>6</p> <p>7</p> <p>8 TRACIE L. CARBAJAL, Texas CSR 2885</p> <p>9 Expiration Date: 12/31/19</p> <p>10 Integrity Legal Support Solutions</p> <p>11 Firm Registration No. 528</p> <p>12 3100 W. Slaughter Lane Suite A 101</p> <p>13 Austin, Texas 78748</p> <p>14 (512)320-8690</p> <p>15 (512)320-8692 (fax)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">27</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE SOUTHERN DISTRICT OF TEXAS</p> <p>3 McALLEN DIVISION</p> <p>4 LETICIA GARZA GALVAN, }</p> <p>5 ET AL }</p> <p>6 }</p> <p>7 VS. } Case No. 7:18-cv-113</p> <p>8 }</p> <p>9 DAVID WHITLEY, in his }</p> <p>10 Official Capacity as }</p> <p>11 Texas Secretary of State,}</p> <p>12 et al }</p> <p>13 REPORTER'S CERTIFICATION</p> <p>14 THE STATE OF TEXAS:</p> <p>15 COUNTY OF HIDALGO:</p> <p>16</p> <p>17 I, Tracie L. Carbajal, a Certified Shorthand</p> <p>18 Reporter in and for the State of Texas, hereby certify</p> <p>19 to the following:</p> <p>20 That the witness, FEDERICO FLORES, JR., was duly</p> <p>21 sworn by the officer and that the transcript of the oral</p> <p>22 deposition is a true record of the testimony given by</p> <p>23 the witness;</p> <p>24 That the original deposition was delivered to</p> <p>25 Michael R. Abrams;</p> <p>That the amount of time used by each party at the</p> <p>deposition is as follows:</p> <p>Jerad Wayne Najvar - 0 hours, 18 minutes</p> <p>Michael R. Abrams - 0 hours, 46 minutes</p> <p>I further certify that I am neither counsel for,</p> <p>related to, nor employed by any of the parties in the</p>	

